

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1140

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

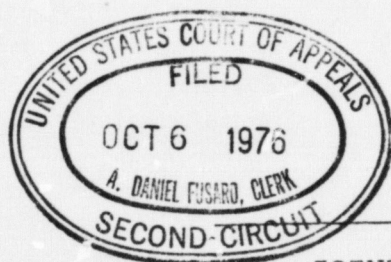
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DOCKET NO. 76-1140

UNITED STATES OF AMERICA  
PLAINTIFF-APPELLEE

V.

DAVID N. BUBAR, ET AL.  
DEFENDANT-APPELLANT



JOINT APPENDIX TO BRIEF

\*\*\*\*\*

PART THREE OF FOUR

PAGINATION AS IN ORIGINAL COPY



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
: UNITED STATES OF AMERICA,  
: vs.  
: Criminal N-75-59  
: CHARLES D. MOELLER, et al.,  
: Defendants.  
: -----X

New Haven, Connecticut  
January 15, 1976

B e f o r e :

Hon. JON O. NEWMAN, U.S.D.J.

1 (In the absence of the jury.)

2 THE COURT: Gentlemen, there's a note from the jury  
3 concerning testimony. It reads as follows: "Request to have  
4 the testimony of guard Windisch and John Shaw's testimony  
5 beginning with the meeting at Howard Johnson's and through to  
6 the trip to New York City on March 2nd."

7 Now, my understanding as to what's available is that  
8 almost all of the testimony of Windisch has been transcribed:  
9 that is, all of his direct and two of the cross examinations, and  
10 I have asked --

11 MR. CLIFFORD: Craig's not here.

12 THE COURT: Oh, he's not here?

13 MR. CLIFFORD: I suppose this concerns him. I'll look.

14 THE COURT: I'll start again, because apparently Mr.  
15 Craig was not present when I started.

16 The note reads: "Request to have the testimony of  
17 guard Windisch and John Shaw's testimony beginning with the meeting  
18 at Howard Johnson's and through to the trip to New York City on  
19 March 2nd."

20 Now, as far as what's available, there has been trans-  
21 cribed the testimony of Windisch, which includes his direct  
22 examination and the cross examination by Mr. Clifford and Mr.  
23 Golub. There is some additional cross examination, and I have  
24 asked the court reporter to locate those portions, so one  
25 possibility would be to give them the transcript and then to



1 read to them the additional cross, it's fairly brief, that has  
2 not been transcribed, so that way, we would respond to their  
3 first request.

4 The second request I think still encounters the same  
5 problem we had yesterday. Testimony of Shaw from the Howard  
6 Johnson's meeting through to the New York City trip is very  
7 extensive, particularly when it includes cross, so I'm reluctant  
8 to deal with that request for the same reasons I told them  
9 yesterday.

10 Are there any other suggestions?

11 MR. ZALOWITZ: Yes, I have. My suggestion is that the  
12 Court should at this moment forget your reluctance to deal with  
13 that issue, for that's the crux of this case, the testimony of  
14 John W. Shaw. I made my position yesterday with reference to  
15 same and made the statement of a word "consternment", which means  
16 in face of the con --

17 THE COURT: Well --

18 MR. ZALOWITZ: -- consternation of the Judge, but,  
19 however, your Honor, without -- without --

20 THE COURT: Mr. --

21 MR. ZALOWITZ: Please, may I continue, sir? I don't  
22 want to be curtailed. Especially at such a crucial moment.

23 THE COURT: Begin by telling me what you want.

24 MR. ZALOWITZ: I want that full testimony of John W.  
25 Shaw made available, whether it creates a problem for the Court

1 or no.

2 THE COURT: All right. I understand your position.  
3 Any other suggestion?

4 MR. ZALOWITZ: And otherwise -- forgive me, sorry --  
5 otherwise, I'm asserting it's a deprivation of due process of law  
6 with regards to the rights of Reverend David Bubar in connection  
7 with the Fifth Amendment, the Fourteenth Amendment, and Ninth  
8 Amendment of the Constitution and all applications of the law and  
9 the decisions there.

10 THE COURT: All right. First, with respect to the  
11 request concerning the Windisch testimony --

12 MR. CRAIG: We have no objection, your Honor.

13 MR. CLIFFORD: I have no objection.

14 THE COURT: The suggestion is to give them the trans-  
15 cript and read them those portions of his testimony that have  
16 not been transcribed?

17 MR. CLIFFORD: My only concern is do we know that --  
18 whose cross examination that is?

19 THE COURT: Yes.

20 MR. DORSEY: I have got a note that Mr. Craig and  
21 Clifford, Mr. Koskoff and Mr. Golub cross examined.

22 THE COURT: There's a cross by Meehan. Mr. Golub,  
23 Mr. Meehan, Mr. Clifford, Mr. Koskoff, Mr. Curtis and then  
24 Mr. Golub and Mr. Meehan.

25 MR. DORSEY: With respect to the request of Shaw's



1 testimony, is your Honor concerned about the fact that not all  
2 of it is now available? The reason I've asked is I talked to  
3 Mr. Russell and Mr. Gale --

4 MR. ZALOWITZ: I'm sorry. I don't hear you sir,  
5 forgive me.

6 MR. DORSEY: I understand that about 85 percent of the  
7 Shaw testimony has already been transcribed.

8 THE COURT: Well, a lot has, but I had the impression  
9 from yesterday that the parts that aren't are still fairly  
10 extensive. Now, maybe they're not. I was told -- of course,  
11 I don't know what's remaining consists of, I don't know whether  
12 it's out of the jury's hearing or not. It would seem to me that  
13 what's been requested would have been the crucial parts from  
14 the point of view of whatever the defendnats requested and, there-  
15 fore, some of the colloquies and -- out of the hearing of jury  
16 matters very well may not have been transcribed.

17 I was going to suggest that the transcription might  
18 be completed, and then we'd be in a better position to deal  
19 with whatever additional requests might be forthcoming from them.

20 I'm frank to say that I'm really not looking to  
21 perpetuate Mr. Zalowitz's discussions with the Court, but I  
22 thought that that might solve some of the problems if all  
23 was actually available. Mr. Russell said he would look into the  
24 question of how much would be required to complete it.

25 MR. KOSKOFF: I think it's a monumental problem, as



1 your Honor indicated, to read all of Shaw's testimony, whether  
2 it's presently transcribed or not, and I think if you read a part  
3 of it, when you get to the cross examination, you can't limit the  
4 cross examination to that part, because it goes to question of  
5 credibility, it goes to a lot -- to me, it's a can of worms. The  
6 whole thing. Unless you read it all, you know, and read it all  
7 is going to take an awfully long time.

8 THE COURT: One other suggestion, which I thought was  
9 Mr. Dorsey's point, was that we transcribe the balance, which  
10 might be completed sometime tomorrow --

11 MR. KOSKOFF: I think one of the problems with that is  
12 that you never know -- you know, the tendency would be to pick  
13 something out of context, if you do that, someone's going to  
14 look for something that someone said, you know, without the  
15 balance that's obtained from a whole reading. You know, if  
16 you were going to give them the trans -- I don't object to  
17 Windisch, actually, as far as Windisch -- when it comes to Shaw,  
18 I think you are going to have to read the transcript or --

19 THE COURT: You'd be opposed to giving them transcript  
20 even if it was available?

21 MR. KOSKOFF: Absolutely. Absolutely.

22 MR. SAGARIN: I concur with that. I think putting that  
23 transcript in the hands of the jury is putting John Shaw in the  
24 jury room. They don't have the benefit of the rest of the  
25 witnesses in the case. I don't have any interest, really, in

1 Windisch's testimony, so I don't take a position on it, but I  
2 strongly object to it.

3 THE COURT: Well, let's deal with what we can deal with  
4 now. We don't have his whole testimony now, so we can't deal with  
5 the whole transcript now.

6 MR. ZALOWITZ: Your Honor, I concur with the comments  
7 of Mr. Koskoff and Mr. Sagarin, and I reiterate my position that  
8 the whole testimony of Shaw and all the cross examination must  
9 be made available, all at one time, and not piecemeal.  
10 Otherwise, it's highly prejudicial.

11 THE COURT: There's been no suggestion to make it  
12 available to them piecemeal.

13 (Jury entered courtroom.)

14 THE COURT: All right, ladies and gentlemen, I have your  
15 note which reads as follows: "Request to have the testimony  
16 of guard Windisch and John Shaw's testimony beginning with the  
17 meeting at Howard Johnson's and through to the trip to New York  
18 City on March 2nd."

19 Now, as far as the Windisch testimony, there has been  
20 transcribed most of it, and the court reporter has located his  
21 notes on some of the cross examination that was not transcribed,  
22 so the way we're going to handle that is to hand you the trans-  
23 cript of Windisch's testimony, and in just a few minutes read to  
24 you those portions of cross examination that were not transcribed,  
25 so altogether you'll have it complete. Just obviously bear in mind



1 that what will be read to you is the cross that in sequence came  
2 after what you will have available for your inspection.

3       Now, with respect to the request concerning John Shaw's  
4 testimony, I appreciate that you endeavored to describe a -- one  
5 sequence of his testimony. The difficult is that, as I indicated  
6 yesterday, the testimony was given over five days, and even the  
7 sequence that you described was the subject of extensive direct  
8 examination, extensive cross examination, redirect and recross,  
9 all of which in various stages touched on portions of the  
10 sequence that you've identified, so that to comply with that  
11 request at all, would mean to read to you virtually five days  
12 of testimony, and for the reasons I indicated yesterday, I'm not  
13 going to do that. It may be, as I indicated yesterday, we might  
14 be able to respond to a more particularized inquiry, but I do  
15 not think it would be appropriate to keep you in the jury box  
16 for the really extended time it would take to read to you all of  
17 the testimony that is responsive to the second request.

18       All right. Then, I'll ask the reporter to take his  
19 notes concerning the Windisch cross and read those portions that  
20 are not included in the transcript.

21       (Portions of the testimony of Fred Windisch read  
22 to the jury.)

23       THE COURT: The jury may go out. I'll give you the  
24 transcript.

25       (Jury left courtroom.)

1 THE COURT: All right, gentlemen, I just mention to  
2 counsel with respect to the transcripts that we discussed last  
3 evening of the three guards which were turned over, I noticed  
4 in looking at those before the jury got them that there were a few  
5 portions of matters that were outside the jury's presence,  
6 either with the jury out of the room or bench conferences, and I  
7 deleted those references, so that the jury only got what was said  
8 in front of the jury.

9 MR. ZALOWITZ: Your Honor, may I just ask one question?  
10 By the Court's statement to the jury, is it the Court's statement  
11 that the Court has refused to honor the request with reference to  
12 the entire transcript as requested by the jury?

13 From my observation and what I heard, and I believe my  
14 hearing was well, and if I'm incorrect, I shall apologize, was  
15 that the Court said he would not furnish that transcript. I say  
16 that's a violation of due process of law with reference to  
17 Reverend David Bubar for the reasons I've enumerated previously.

18 THE COURT: Well, you are asking as to what happened  
19 yesterday?

20 MR. ZALOWITZ: Today, as well, sir.

21 THE COURT: Well, your question was: did I refuse their  
22 request --

23 MR. ZALOWITZ: From the statement you made, yes, sir.

24 THE COURT: -- for the full testimony?

25 MR. ZALOWITZ: For what they requested, sir, today.



1 THE COURT: Well, now you are asking a different question.

2 MR. ZALOWITZ: I'm asking both questions, yesterday  
3 and today, sir.

4 THE COURT: All right. I think what I said could not  
5 possibly be misunderstood, but so that you'll understand, they  
6 asked yesterday to have read the entire testimony of Shaw, and I  
7 rejected that request.

8 They asked today for a portion, namely: the part, as  
9 they described it, from the Howard Johnson's meeting to the  
10 drive to New York City. Today I rejected reading them portions --

11 MR. ZALOWITZ: Or furnishing that portion totally to  
12 them from what has taken place in this courtroom, sir? Is  
13 that the ruling?

14 THE COURT: Are you going to let me finish?

15 MR. ZALOWITZ: Of course. I apologize.

16 THE COURT: Thank you very much.

17 MR. ZALOWITZ: I'm honored to be here, sir.

18 THE COURT: As to whether I will furnish them transcript,  
19 for the moment; no transcript of John Shaw is being furnished,  
20 primarily for the reason that a complete transcript does not  
21 exist. There has been objection expressed to a part of the  
22 transcript being furnished to them, and there has also been objec-  
23 tion expressed to a complete transcript being furnished, but  
24 since it doesn't exist at the moment, I'm making no decision  
25 about full transcript. They have asked to have read the full

1. testimony and a part of it, and I have ruled that both the full  
2. testimony and the part that they've requested is so extensive  
3. that as an exercise of discretion, I think it would be an undue  
4. intervention into their deliberation to put them in the jury box  
5. and read to them five days' worth of testimony.

6. That's the ruling. I trust you understand it?

7. MR. ZALOWITZ: I understand it totally, sir, and  
8. I object to your ruling.

9. MR. CURTIS: Can we have a lunch hour?

10. THE COURT: Yes, I was going to say: all right,  
11. counsel are excused until two o'clock, and thereafter, please  
12. observe the five-minute rule, as I explained it yesterday, and  
13. if you are absent from the building, leave word with the  
14. marshals where you are.

15. (Recess taken for lunch.)  
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AFTERNOON SESSION

(In the absence of the jury.)

THE COURT: The jury advised the bailiff they want to recess for the day, and so I am just bringing them back to instruct them.

(Jury entered courtroom at 4:50 p.m.)

THE COURT: Ladies and gentlemen, I understand you have decided to suspend for the day and resume tomorrow morning, and as I indicated yesterday, that's a perfectly acceptable schedule.

I simply want to remind you again as forcefully as I can that during these breaks in your deliberations, you have got to consider yourselves as if you were physically sequestered in fairness to all the parties in the case, and in fairness to your fellow jurors. You must not permit any outside influence or any discussion with anybody but your fellow jurors to have any bearing on your consideration of the issues that have been entrusted to you.

So bearing that in mind, and I am sure you will adhere to it strictly, jury is excused, and you can resume ten o'clock tomorrow. Again, check in with the Clerk and go to the jury room. I imagine it will be that same room used today. Was that reasonably satisfactory? I take it it's an improvement over yesterday's room.

All right. We will plan to use that room again. Bear

1 in mind that you should not begin the deliberations until all  
2 twelve are assembled.

3 All right. Jury is excused until ten o'clock.

4 (Jury excused.)

5 THE COURT: I will ask the marshals that people  
6 remain in the courtroom a few minutes until the jurors have left  
7 the building. Since they have their coats, that will be very  
8 quickly.

9 All right.

10 (Court adjourned at 5:00 p.m.)  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

----- -X  
UNITED STATES OF AMERICA,  
vs.  
CHARLES D. MOELLER, et al.,  
Defendants.  
----- -X

Criminal N-75-59

New Haven, Connecticut  
January 16, 1976

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

1 (In the absence of the jury, at 11:35 a.m.)

2 THE COURT: Gentlemen, there is a note from the jury  
3 with three items, which I will read to you.

4 The first says: "Request that we reivev the rules of  
5 law with respect to this case. It seems that our interpretations  
6 differ and we would like to have this matter cleared."

7 Second part reads: "We request John Shaw's testimony  
8 regarding the activity in Plant 4 during the night of March 1.  
9 Also, the testimony referring to the trip to New York during the  
10 early morning hours of March 2."

11 And the third part has to do with scheduling. It says:  
12 "A juror has requested to adjourn at 4:00. He has an appointment  
13 at 4:30 p.m."

14 The last thing I can handle. I think as to the first  
15 part, I am simply going to have to tell them that they will have  
16 to be more specific. I may try to simply review the categories  
17 of the instruction that might help them in telling me what their  
18 problem is, in other words, I might indicate to them that the  
19 instructions cover several different areas of law, they cover  
20 the elements of the offense, they cover reasonable doubt and  
21 burden of proof and things of that sort, they cover certain  
22 considerations about accomplice testimony, eyewitness testimony,  
23 hearsay testimony, things of that sort, so that I would hope by  
24 that to evoke some more precise response. I just can't believe they  
25 want me to read to them a two-hour charge.



1           Now, the testimony problem is not much different than  
2 it was yesterday. They still are asking for a good bit of  
3 testimony, although they are obviously trying to narrow it. The  
4 mechanical problem is this: we don't have all of the Shaw cross  
5 examination transcribed. It may be, particularly since their last  
6 request makes it pretty clear that they have no expectation of  
7 concluding their deliberations today, that we could have the  
8 entire Shaw testimony transcribed by Monday. If we had it  
9 available, it shouldn't be too difficult to then see how much  
10 of that testimony is responsive to their request, then make  
11 the determination whether to read to them those portions of the  
12 fully transcribed testimony that are responsive to their request.

13           I suspect that to try to do that without transcript,  
14 bearing in mind there are nine lawyers, is going to be a virtually  
15 impossible task, whereas, if you have the transcript and can  
16 simply indicate what pages or portions thereof you think are  
17 responsive to those requests, it will be very easy to just  
18 decide yes or no, but if we do it with the court reporter reading  
19 to us and have a nine-way colloquy of what does respond to  
20 their request and what doesn't, I don't see how it will work.

21           Yes, Mr. Zalowitz?

22           MR. ZALOWITZ: For the record, your Honor, whether it  
23 takes ten minutes or take two hours, obviously, this jury is  
24 not clear as to the rules of law that have been enunciated by  
25 this Court. To endeavor just to give them highlights or to give

1 them captions, I feel is insignificant and is a violation of  
2 due process of law so far as Reverend Bubar is concerned --

3 THE COURT: You didn't understand a word I said.

4 MR. ZALOWITZ: I understood thoroughly. I may be in  
5 difference with you, but I understood.

6 THE COURT: I am not going to give them captions, I  
7 am going to suggest to them what the different areas of the  
8 charge are so that they can then tell me what they want. That's  
9 quite different.

10 MR. ZALOWITZ: I say they shall not be put into that  
11 particular box, because that box is the box of which I am urging  
12 and have for the last two days, sir. That box is actually  
13 putting the jury in the position of being supplicant to the Court  
14 in their determination. I made the statement.

15 THE COURT: Fine. You have made a statement.

16 MR. ZALOWITZ: Secondly -- I have not concluded, please  
17 -- secondly, sir, I am also saying with reference to the testimony  
18 -- now the Court has said in my presentation in the last several  
19 days, "Mr. Zalowitz, you said it three times." I am saying  
20 now for the fourth time, sir.

21 THE COURT: Do you think it's necessary to do that, sir?

22 MR. ZALOWITZ: Yes, sir, I am so doing it. With under-  
23 standing of the Court. Your Honor, to emasculate any testimony  
24 that they requested initially, I am saying, I say with great  
25 respect, is improper. I am saying, also, sir --



1 THE COURT: That's the fourth time. I am not going to  
2 get it a fifth time.

3 MR. ZALOWITZ: I am just clarifying in propriety --

4 THE COURT: It doesn't have to be clarified. It's  
5 an impropriety because it's been made repetitiously, and I  
6 don't understand it, and I don't need it again.

7 MR. ZALOWITZ: The Court is very sagacious and under-  
8 stands the full significance of my statements and what I have  
9 said previously, I am enumerating right now as if I said it  
10 completely again.

11 THE COURT: Four times makes it clear to me, believe  
12 it or not.

13 Any other suggestion that counsel have as to any of  
14 their requests?

15 MR. DORSEY: I take it, your Honor, that insofar as  
16 the request of testimony is concerned, that you have determined  
17 that you're not going to inquire of them as to exactly what it  
18 is they want? That is, whether they simply want particular  
19 portions of it.

20 I would point out that -- that if they, for example,  
21 refer to some time period, that could be very easily covered by  
22 a particular portion of the direct, and the question is whether  
23 you are going to inquire of them as to whether they want not only  
24 the direct, but the cross, and whether or not -- assuming that  
25 you get one answer or another -- whether you're going to, in effect,

1 go through all of the cross to cull out every bit of that?  
2 It's obviously not in the same flow as the direct was, to be  
3 sure that if they do want both the direct and cross, that every  
4 bit of everyone's cross that pertains to the area they have  
5 inquired goes to them. I am not sure --

6 THE COURT: I do plan to do it by giving them direct  
7 and cross, so long as their request is for testimony. If they  
8 ever come back and say, "What we want is Mr. Koskoff's cross or  
9 Mr. Dorsey's direct or Mr. Bowman's cross," then I will have  
10 to deal with that request, but so long as their request is for  
11 testimony, I am not going to pick and choose among lawyers  
12 questioning.

13 MR. DORSEY: Would it not seem simpler if their  
14 request is actually something which your Honor doesn't have to  
15 determine, but they can determine themselves? Can that not be  
16 defined by a question of them as to what it is exactly that they  
17 do want? I am not suggesting that they do necessarily only want  
18 one portion, one aspect of it, but on the other hand, if we find  
19 that out, that could be considerably simplified, because, as I  
20 understand it, some portions of the testimony actually have  
21 already been transcribed.

22 THE COURT: Well, I have indicated to them that it would  
23 be helpful if they could make their inquiry a little more focused,  
24 and this represents the latest version of their effort to do that.  
25 It doesn't distinguish between direct and cross, and so I don't



1 plan to make that distinction.

2 MR. DORSEY: By asking them the question, it doesn't  
3 amount to a distinction drawn by your Honor, but allows them to  
4 define more specifically what it is that they want if they  
5 can define it more specifically.

6 THE COURT: Well --

7 MR. DORSEY: I would request that your Honor do that.

8 THE COURT: Defense counsel would think it draws their  
9 attention in a way that they would prefer it not be drawn.

10 MR. DORSEY: I am sure that's true, but the fact  
11 still remains if a jury does specifically have a request, they  
12 have the right to make that request.

13 THE COURT: That's right, but their request is for  
14 testimony. They didn't say direct testimony.

15 MR. DORSEY: But it hasn't been brought to their atten-  
16 tion that they could make a more specific request if they wished  
17 to do so.

18 THE COURT: I did mention yesterday that the testimony  
19 involved direct, cross, redirect and -- I may have said redirect.  
20 If I did, that was in error. There was extensive recross.

21 MR. DORSEY: I would ask that your Honor inquire of them  
22 as to whether it can be more specifically defined as to what they  
23 want in that regard.

24 MR. CRAIG: Could I inquire of Mr. Gale to what extent the  
25 burden would be to complete the transcript?

1 THE COURT: I have looked into that with the court  
2 reporter, and one of our problems is we are not entirely sure  
3 for the reason that without reviewing the notes, we can't tell  
4 how much of the remaining notes involves bench conference and  
5 matters outside the presence of the jury. Our estimate is  
6 there is a fair chance of getting it completed Monday, and, in  
7 any event, there is a substantial amount of it done now, so that  
8 counsel could well spend today and perhaps part of tomorrow  
9 indicating what of the transcribed pages they think is  
10 responsive to this request. That task I don't think it all that  
11 difficult because the time sequence they have indicated  
12 is reasonably identifiable.

13 MR. CRAIG: Could I ask whether that request really  
14 does significantly focus over and above the request prior to that?  
15 It seems to me this request is almost identical to the request  
16 that you rejected yesterday with respect to Shaw's activities  
17 in the plant and the trip to New York.

18 THE COURT: You see, this says the night. That's quite  
19 a limitation.

20 MR. CRAIG: Four or five hours.

21 THE COURT: Not only four or five hours of time, but  
22 probably two days of testimony.

23 MR. KOSKOFF: It would be your intention to just exclude  
24 everything else, give them that, and whatever all the lawyers  
25 think are part of that that they propose, that they would get?



1 Or is it your intention to give them the whole transcript? I  
2 am not quite sure --

3 THE COURT: What I have in mind -- and this is on the  
4 assumption that what we think is responsive is not too extensive,  
5 In other words, I don't want to stop their deliberations and read  
6 to them for three days, much less five -- but if we transcribe  
7 it all and determine that the part of the transcribed testimony  
8 that is responsive to their request can be read in a reasonable  
9 period of time, then we would read that part to them.

10 MR. KOSKOFF: Don't you almost have to read all of the  
11 cross, even if it doesn't relate to that subject, that particular  
12 subject? Because what you're dealing with is credibility. The  
13 other day I thought it was a monstrous job, unless you read all the  
14 testimony or none. Because you still have the problem, don't  
15 you --

16 THE COURT: I think a jury is entitled to request a  
17 portion of testimony. Obviously, that excludes other parts of  
18 the testimony that may have some bearing on the credibility of  
19 the testimony they have requested, but there is really nowhere  
20 to draw the line. By that token, we would read to them the  
21 whole trial, because so many other witnesses bore on the  
22 credibility by giving different accounts. They bore on the  
23 credibility of what Shaw said as to the night, so I just think  
24 it's impossible to respond to a request by giving them everything  
25 that bears on credibility short of reading them the entire trial.

1 There may be some aspects that not only bear on credibility, but  
2 bear on the night. In other words, in the cross a lawyer said  
3 to Mr. Shaw, "Didn't you say to the FBI that you didn't see a  
4 man there that night?", well, that certainly is cross that  
5 bears on the testimony they have requested, so to that extent,  
6 they get the attack on credibility.

7 As I say, I don't know how much would be responsive. I  
8 think it might be manageable, and I think there is a sufficient  
9 likelihood that it's worth having the reporter, as promptly as  
10 he can, finish the transcript so that we can make our determina-  
11 tion and, indeed, we have several volumes now to work with.

12 My own review of my notes on cross indicate that much  
13 of the cross is not responsive to this request.

14 Any other observations?

15 MR. CLIFFORD: I don't like it, but I can't say why.

16 (Jury entered courtroom at 12:00 noon.)

17 THE COURT: Good morning, ladies and gentlemen, your  
18 note this morning has three items, and dealing with the third  
19 one first, which simply says: "A juror has requested to adjourn  
20 at 4:00 p.m. He has an appointment at 4:30 p.m.," we will adopt  
21 that schedule for today. I suspect there will be some snow, so it  
22 may be just as well.

23 Your second request, let me read it to you, says:  
24 "We request John Shaw's testimony regarding the activity in  
25 Plant 4 during the night of March 1. Also, the testimony



1 referring to the trip to New York during the early morning hours  
2 of March 2."

3 At the moment, I am just unable to tell you whether we  
4 will be mechanically able to respond to that request or not.  
5 It's something we are going to explore. We will have to review  
6 a lot of reporter's notes, of some things transcribed, and just  
7 see how much is involved, and then I will have to make some  
8 determination, and, frankly, what it comes down to is this: if  
9 the testimony responsive to your request involves reading to you  
10 material that would take an extended period of time to read to  
11 you, I am not so sure I am going to do that, but that's something  
12 we will explore, and I just don't think we will be able to know  
13 the answer to that today, but I assume from your last request  
14 that you don't expect to conclude your deliberations today, and  
15 I just -- and will report further to you on the subject of  
16 whether we will be able to answer your request concerning Shaw's  
17 testimony on Monday.

18 Your first request says: "Request that we review the  
19 rules of law with respect to this case. It seems that our  
20 interpretations differ, and we would like to have this matter  
21 cleared."

22 Well, now, on that one, I am going to ask you to give  
23 me a little further guidance. It may be that you're asking for  
24 the entire charge to be read, or at least that portion of it  
25 that dealt with the law rather than a summary of the evidence.

1 I point out to you that even the discussion of the  
2 law probably took about an hour and a half, but if your feeling  
3 is that you need the entire discussion of the law reread to you,  
4 I would want to know that.

5 It may be that there are certain portions as to which  
6 you want to hear a repeat of the instruction. For example, when  
7 you say, "We would like to have this matter cleared," naturally,  
8 it raises in my mind the question of whether there is a  
9 particular problem.

10 Let me indicate the different areas the charge  
11 covered, which might assist you, and then tell me what you have  
12 in mind.

13 There were instructions on the standards involved on  
14 presumption of innocence, burden of proof, proof beyond a  
15 reasonable doubt, things of that sort. There were instructions on  
16 the elements of the four offenses.

17 I should break that down. There was at one point  
18 simply a listing of each element of each offense, and then there  
19 was some discussion as to further explanation of the elements  
20 of the offenses.

21 Then elsewhere in the charge there was a discussion  
22 of some considerations that must be borne in mind in assessing  
23 certain testimony. For example, considerations to be borne in  
24 mind in assessing eyewitness testimony, in assessing the testimony  
25 of an accomplice, in considering telephone toll records, things



1 of that sort.

2 Now, before I decide what to do with your first  
3 request concerning the rules of law, I would rather hear from  
4 you once again in a note before I make any decision, frankly,  
5 so that, for example, you could tell me, "We want the entire  
6 charge from word one to the last word," or you could say, "We  
7 are not interested in your summary of the evidence, we are  
8 interested in whatever you said about the rules of law, leaving  
9 off the summary of the evidence," or you might say, "We are  
10 interested in what you said about certain aspects of the law,"  
11 either the elements or the standards of proof, what does  
12 reasonable doubt mean, or what are the considerations about  
13 eyewitness testimony, or something of the sort, so I think you  
14 can give me a little more guidance as to whether you want all or  
15 some parts of the charge, because the total charge, I think, took  
16 about two and a half hours.

17 Now, it may be that's what you want, but I am reluctant  
18 to sit you here and read to you for two and a half hours and  
19 then find out: no, you only wanted ten minute's worth on one  
20 very precise topic, but weren't exactly sure how to request it,  
21 so that's why I rather give you that opportunity before I hold  
22 you as a captive audience in a jury box for two and a half hours.  
23 So I will ask you, then, to resume your deliberations, and at  
24 such time as you care to send me a further note concerning a  
25 reinstruction on the law, and I will just have to defer the issue

1. of reading your testimony until I can explore how much time will  
2. be involved in doing that.

3. Now, if it occurs to you to further refine your  
4. inquiry as to testimony, of course, you can do so. I am not  
5. suggesting you need to, but if you have a more specific inquiry  
6. as to testimony, you can let me know that, but I will take the  
7. request that's now before me and explore with the court reporter  
8. how and whether we are able to comply with that.

9. All right. Jury excused.

10. (Jury excused at 12:05 p.m.)

11. THE COURT: There were different junctures during the  
12. trial when one or more defendants asked to be excused, and in  
13. almost all instances, the request was made before the defendant  
14. left, and I don't think I ever turned one down. I may have  
15. delayed one a bit, but I think generally that was always honored.

16. There were a few instances where somebody said he  
17. left, and we will put it on the record when he gets back, and  
18. generally that occurred, but I think not always, and I know there  
19. was a recent time when a defendant was not here, but his lawyer  
20. assured me he heard from the client, and the client understood  
21. the trial would go ahead, and he had no objection.

22. Rather than recount every single one, I really think  
23. in view of the representations I have had, that the defendant  
24. ought to put on the record, so there will be no ambiguity about  
25. it, if it's the case, which is what I have been told, that, in



1 fact, they do not object to the continuation of the trial up to  
2 this point. I am not talking about anything prospective,  
3 because defendants are all going to have to be here through this  
4 stage and the return of any verdicts, but that they -- if it's  
5 the case, as I have been -- as I have had represented to me, that  
6 each defendant did not and does not object to the continuance  
7 of the trial during those periods of time when he was not  
8 personally in attendance, I think there ought not to be an  
9 ambiguity about that. I think the record is about 99 percent  
10 complete, but I think it ought to be 100 percent complete.

11 Is that your understanding, Mr. Just, that you did  
12 not and do not object to those portions of the trial that occurred  
13 in your absence?

14 DEFENDANT JUST: No, I have no objection.

15 MR. NEIGHER: Ronald Betres.

16 THE COURT: Mr. Ronald Betres, is that your understand-  
17 ing, that you have no objection and did not object to the fact  
18 that there were portions of time when you were absent and the  
19 trial continued in your absence?

20 DEFENDANT R. BETRES: Yes, sir. No objections.

21 THE COURT: All right. Mr. Michael Tiche, is that  
22 a correct statement of your understanding?

23 DEFENDANT M. TICHE: Yes.

24 THE COURT: That you do not object and did not object  
25 to those portions of the trial that continued in your absence?

1 DEFENDANT M. TICHE: That's correct. I had no objection.

2 THE COURT: Mr. Dennis Tiche, is that your understanding?

3 DEFENDANT D. TICHE: That's my understanding.

4 THE COURT: You have no objection and did not object  
5 to those portions of the trial continued in your absence?

6 DEFENDANT D. TICHE: None whatsoever.

7 THE COURT: Mr. Coffey, is that your understanding,  
8 that you have no objection and did not object to those portions of  
9 the trial that continued in your absence?

10 DEFENDANT COFFEY: I have no objections.

11 THE COURT: Mr. Moeller, is that your understanding,  
12 that you had no objection to those -- that you had no objection  
13 to those portions of the trial that continued in your absence?

14 DEFENDANT MOELLER: No, sir, I had no objection.

15 THE COURT: Mr. Peter Betres, is that your understand-  
16 ing, that you had no objection to those portions of the trial  
17 that continued in your absence?

18 DEFENDANT P. BETRES: You know my answer.

19 THE COURT: I think I do, but I would like to have it  
20 from you so there is no ambiguity.

21 DEFENDANT P. BETRES: No objections.

22 MR. ZALOWITZ: Your Honor, I don't believe that there  
23 was any time that Reverend Bubar was not here, however, if he was  
24 not here, in reply to the Court's inquiry, we have no objection.  
25 To the best of my recollection, I think we were here all the time.



1 THE COURT: There might have been only some brief  
2 absences to just leave the courtroom itself. He may have been  
3 nearby or something, but I think he was in and out on some  
4 occasions.

5 In any event, Reverend Bubar, I take it from what your  
6 counsel says, but I want to hear from you, that you do not  
7 object and did not object to the trial continuing during any  
8 portion of the time you were not present, is that correct?

9 DEFENDANT BUBAR: That's correct.

10 THE COURT: All right. Counsel may want to review the  
11 transcribed portion of the Shaw testimony. Many of them have  
12 copies of the direct, and their part of the cross examination,  
13 and I will leave with the Clerk a full set of the transcribed  
14 portion.

15 MR. KOSKOFF: I would like the Court to tell us what  
16 the word "night" means, what time. After six o'clock? I assume  
17 it would be sundown, if you want to use the biblical way of  
18 doing it, which would be around six o'clock.

19 MR. ZALOWITZ: I think in reply -- and I am just offering  
20 a suggestive thought -- when he said the word "biblical time",  
21 I believe it's from eventide to the morrow, from the mincha to  
22 the shacharis, I think that's the appropriate answer.

23 THE COURT: I will be open to any counsel's suggestion  
24 as to those portions of the transcript that they think are  
25 necessary to respond to the jury's request.

1 MR. ZALOWITZ: I have this query, being that Reverend  
2 Eubar all the way through has been penurious and has not had  
3 the availability of the transcripts, except those limited, very  
4 limited, portions that were paid for by counsel individually, we  
5 don't have that availability, so may I ask that that be made  
6 available, also, specifically to Reverend Eubar and myself  
7 because we have not had that honored position in this courtroom  
8 at any time.

9 THE COURT: In the first place, it was as open to you  
10 as it was to anyone else to make application for transcription at  
11 public expense.

12 Number two, this transcript, as I just indicated, will  
13 be filed with the Clerk and will be available. It will not be  
14 available specifically to you as you ask, but it will be available  
15 to all counsel, and there are enough volumes here so that every-  
16 body can be kept busy.

17 MR. ZALOWITZ: In reply to your statement, I differ  
18 with your statement for this reason, the availability of the  
19 transcript at government expense was not made available to us,  
20 sir.

21 THE COURT: Did you ever make a request to me that I  
22 denied --

23 MR. ZALOWITZ: Every request I made with regard to  
24 anything here with regard to the position, penuriousness, except  
25 the selection of the witnesses which the Court has granted, but all



1 others have been as if we would have made a position to no avail.

2 THE COURT: Please refresh my recollection. When did  
3 you ever request that any testimony be transcribed for your  
4 use at public expense?

5 MR. ZALOWITZ: In reply, I have never made that  
6 request because I knew it was to no avail. That's why I had  
7 to personally pay for same to Mr. Gale, and I have the checks to  
8 substantiate my position.

9 THE COURT: I can't help it if you made a wrong  
10 prediction on how I would rule.

11 MR. ZALOWITZ: This is no prediction, sir.

12 THE COURT: We will stand in recess.

13 MR. ZALOWITZ: I object to your statement.

14 (Recess taken.)  
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AFTERNOON SESSION

(In the absence of the jury, 2:15 p.m.)

THE COURT: Gentlemen, there is a note which reads as follows: "Would like Count Three and Four explained with respect to aiding and abetting."

I think the only accurate way to deal with that is simply to give them the instruction on aiding and abetting and give them the instruction on Counts Three and Four.

MR. ZALOWITZ: My comment still stands as I have enumerated previously, even as to same, because it's not total and it's not what they originally wanted, and by the Court's request to them, the Court has conditioned them to come in to make this request. I am objecting to same, unless the complete charge and the complete law is read to them.

MR. CRAIG: When you say instructions with respect to aiding and abetting, there will be no reference to specific evidence in those instructions? I think there were a number of examples, as you cited, and I would request that those examples with reference to the various parts of the evidence not be given, but just be a straight legal instruction, because it might unfairly highlight certain aspects of the evidence.

THE COURT: I don't think there is a reference in them to evidence. There are probably several references to government contentions.

MR. CRAIG: That's what I mean.



1 THE COURT: Frankly, I don't think I can go through  
2 and isolate everything, and I don't think it would be clear if  
3 I did.

4 MR. CRAIG: If I recall, there was one sentence.  
5 There would not be that much difficulty in isolating that one  
6 sentence. I think you list a certain number of acts that the  
7 government contends satisfies the aiding and abetting element,  
8 and I think you list three or four acts for the various  
9 defendants.

10 THE COURT: I think I list each contention.

11 MR. CRAIG: I think you do. I would request that not  
12 be part of the instruction.

13 M. CURTIS: I think you gave an instruction on  
14 definition of aiding and abetting. I think that would be  
15 sufficient --

16 THE COURT: It's not what they have asked for, because  
17 they refer specifically to some explanation on Counts Three and  
18 Four, so I just can't tell them about aiding and abetting and  
19 leave it at that. I have to tell them what they asked for.

20 MR. CURTIS: Do you intend only to read material that  
21 you have already told them? You're not going to do anything in  
22 addition to what you have already done?

23 THE COURT: No.

24 MR. SAGARIN: You're going to tell them what the elements  
25 of Counts Three and Four are, I understand that?

1 THE COURT: It's a little more than the elements. I am  
2 going to tell them whatever I told them about Counts Three and  
3 Four.

4 MR. SAGARIN: The note seems to ask for the elements  
5 of Counts Three and Four and for an instruction on aiding and  
6 abetting.

7 THE COURT: It does say that. It says, "Would like  
8 Counts Three and Four explained with respect to aiding and  
9 abetting."

10 MR. SAGARIN: All you can do is explain the elements and  
11 give a charge on -- unless the Court is going to get involved  
12 in summarizing the contentions, which I think was prejudicial to  
13 start with, and then do it again, particularly when it comes a  
14 week after some of the defendants have summed up --

15 THE COURT: I'm sorry, I can appreciate that counsel  
16 don't want to have the jury even told what the claim is in this  
17 case, but I didn't think I could accurately explain it the first  
18 time, and I don't think I can accurately respond to this request.  
19 I wouldn't be explaining if I didn't repeat what I said on these  
20 topics the first time. I just can't start dissecting it.

21 MR. SAGARIN: Obviously, I can't except to what you're  
22 going to say until we know what it is you're going to say, but it  
23 seems to me that if the Court explains, at least in the first  
24 instance, what the elements of those counts are and what aiding  
25 and abetting means, and even if the Court said the government



1 claims that these persons are aiders and abettors on Counts  
2 Three and Four, and these persons are principals on Counts Three  
3 and Four, that's all that has to be done. I don't think you  
4 ought to go beyond that.

5 THE COURT: I disagree. That's a partial explanation,  
6 and they have not said, "Give us a partial explanation." They  
7 said, "Explain it," and I intend to.

8 MR. SAGARIN: I would except to the Court doing anything  
9 other than simply explaining the elements of Counts Three and  
10 Four and giving a definition of aider and abettor and advising  
11 the jury who it is the government claims are aiders and abettors  
12 on those counts, and who it is the government claims are principals.

13 MR. CURTIS: I would join in that.

14 MR. BOWMAN: I would join in that.

15 MR. KOSKOFF: We join in that, also.

16 MR. ZALOWITZ: I likewise join in those comments.

17 THE COURT: You have to make up your mind, Mr. Zalowitz.  
18 You first said you wanted it all, and now you're agreeing with  
19 them that you want less, so you can make -- you can object any  
20 way you want, but I think in fairness to you, you ought to know  
21 which position you're taking.

22 MR. ZALOWITZ: I am taking the first, deleting and  
23 waiving the last.

24 MR. NEIGHER: I join Mr. Sagarin.

25 MR. CLIFFORD: On behalf of Mr. Michael Tiche, I join

1 Mr. Sagarin.

2 MR. CRAIG: I also take exception.

3 THE COURT: The only other matter I should bring to your  
4 attention is that when the Clerk of the Court, this being Friday,  
5 distributed to the jurors their checks for their compensation,  
6 they made a request of her that a copy of the Handbook for Jurors  
7 be made available to the jury.

8 My inclination is not to honor that request. I don't  
9 know if anybody would want me to. It may be we are unanimous on  
10 this one.

11 MR. CLIFFORD: I object to it being given.

12 THE COURT: Does anybody want it given?

13 All right.

14 MR. CRAIG: I am not familiar with the book.

15 THE COURT: It's here, and so there is no doubt what  
16 it is, I will have it marked as a Court exhibit if you want.  
17 The problem has come up. As a matter of fact, our Court of  
18 Appeals has said that it's permissible to have the jury see it.  
19 They said that in U.S. against Allied Stevedoring, 258 F. 2nd,  
20 104. They said it in the context, I believe, of jurors seeing  
21 it when they come in for jury duty, and not in the context of  
22 seeing it as a specific item during deliberations.

23 It just seems to me whatever documents for explanation,  
24 no matter how innocuous, go to them at this sensitive time, should  
25 be only those that are instructions of law that deal with this



1 particular case, so for those reasons, I do not think I should --

2 MR. CRAIG: Have they already seen this?

3 THE COURT: It's hard to tell. I would imagine some  
4 of them have. They are not required to. It's customary whenever  
5 a juror first comes for jury duty that these are available, some  
6 take them and read them, some glance at them, and I am sure  
7 some ignore them.

8 MR. SALOWITZ: I have made no comment on same at this  
9 moment, but I want to have leave to make a comment as to that  
10 portion.

11 (Jury entered courtroom at 2:25 p.m.)

12 THE COURT: I have your note which reads as follows:  
13 "Would like Counts Three and Four explained with respect to  
14 aiding and abetting."

15 I will respond to it this way: let me first read that  
16 portion of the charge that dealt with aiding and abetting, and  
17 then turn to Counts Three and Four. I think that's the way I did  
18 it in the charge, and it may be more orderly that way.

19 What I am about to discuss at this point concerns the  
20 three substantive counts, and not the conspiracy count. With  
21 respect to each of the substantive counts, there are two ways  
22 in which a defendant can be found guilty. One is as a principal:  
23 that is, he is found beyond a reasonable doubt to have committed  
24 the offense himself and to have had the requisite knowledge or  
25 intent. The second way a person may be found guilty of an

1 offense is as an aider or abettor: that is, he is found beyond  
2 a reasonable doubt to have aided or abetted someone else to  
3 commit the offense, and he has the same knowledge of intent  
4 required for conviction as a principal. If a person aids or  
5 abets another to commit a crime, then he may be found guilty  
6 of the crime even if he did not personally do each act necessary  
7 to constitute the offense charged.

8 Section 2 of the Criminal Code provides as follows:

9 "Whoever commits an offense against the United States or aids,  
10 abets, counsels, commands, induces or procures its commission,  
11 is punishable as a principal."

12 Under this statute, every person who willfully  
13 participates in the commission of a crime may be found to be  
14 guilty of that offense. Participation is willful if done  
15 voluntarily and intentionally, and with the specific intent  
16 to do something the law forbids, that is to say, with bad purpose  
17 either to disobey or to disregard the law.

18 In order to aid and abet another to commit a crime, it  
19 is necessary that the accused willfully associate himself in some  
20 way with the criminal venture, and willfully participate in it  
21 as he would in something he wishes to bring about: that is to  
22 say, that he willfully seek by some act of his to make the  
23 criminal venture succeed.

24 To be guilty as an aider or abettor, a person must be  
25 shown beyond a reasonable doubt to know the objective of the



1 criminal venture and to intend by his actions to help make that  
2 venture succeed. He must also be shown beyond a reasonable doubt  
3 to have the same knowledge or intent required for conviction as  
4 a principal.

5 A person cannot be convicted of aiding and abetting the  
6 commission of a crime unless the evidence establishes beyond a  
7 reasonable doubt that the crime occurred and that some other  
8 person performed the acts constituting the crime.

9 A person cannot be guilty of any crime, either as a  
10 principal or as an aider or abettor, simply by being present  
11 during the commission of a crime, even if he has knowledge that  
12 a crime is being committed. There must be proof beyond a  
13 reasonable doubt that a defendant participated in the criminal  
14 offense, that he in some way took action to help make the venture  
15 succeed.

16 If you find with respect to any defendant on any count  
17 that he is guilty as an aider or abettor, your verdict is simply  
18 guilty on that count, without any special mention of the aiding  
19 and abetting statute.

20 Count Three charges a violation of Section 844(d) of  
21 the Criminal Code. That section reads as follows:

22 "Whoever transports . . . in interstate commerce any  
23 explosive with the knowledge or intent that it will be  
24 used . . . unlawfully to damage or destroy any  
25 building . . ." shall be punished.

1 Count Three of the indictment charges a violation of  
2 this statute by eight defendants, all except Ronald Betres.

3 I won't read the count again, since you have it with  
4 you.

5 There are two elements of the crime charged in Count  
6 Three, each of which must be proven beyond a reasonable doubt  
7 before there can be a conviction on that count. First, that  
8 a defendant on or about February 28, 1975, did knowingly  
9 transport an explosive from Pennsylvania to Connecticut;  
10 second, that at the time of the transportation, he knew or  
11 intended that the explosive would be used unlawfully to  
12 damage or destroy a building.

13 With respect to the first element, the statute defines  
14 "explosive" to include all forms of high explosives, blasting  
15 materials, detonators and detonating agents. You would be  
16 entitled to conclude that dynamite is an explosive within the  
17 meaning of Section 884(d).

18 With respect to the second element, it is not required  
19 that the person who transports the explosive both know and  
20 intend that it would be used unlawfully to damage or destroy  
21 a building. It is sufficient if he either knew it would be  
22 so used or intended it would be so used.

23 An explosive is used "unlawfully" to destroy a  
24 building if it is used in the course of an arson in violation  
25 of state law.



1 As with Count Two, the requisite knowledge or intent  
2 for Count Three must be found to exist at the time of the  
3 transportation of the explosive, or prior to such transportation.

4 Now, in considering Count Three, you will again be  
5 concerned with the distinction I previously explained between  
6 those who may be found guilty as principals and those who may  
7 be found guilty as aiders and abettors. The government's  
8 evidence, if you accept it, would tend to establish that the only  
9 defendant who actually transported an explosive from  
10 Pennsylvania to Connecticut was Connors.

11 As to all of the other defendants, the government  
12 contends that they are guilty of Count Three in that they  
13 knowingly aided and abetted Connors in transporting the  
14 explosives. Bear in mind the standard I have previously  
15 explained as to what constitutes aiding or abetting. Without  
16 repeating them in detail, let me simply remind you that they  
17 require that a person know the objective of the criminal  
18 venture and by his action participate in it: that is, make it  
19 his own or in some way act to help bring about the commission  
20 of the offense.

21 Again, I remind you that an aider or abettor under  
22 Count Three must be shown to have the same intent required for  
23 conviction as a principal.

24 You will also recall that I told you a person can be  
25 found guilty as an aider or abettor only if someone else,

1 the principal, committed the acts constituting the offense.  
2 It is not necessary, however, that the principal be found  
3 guilty. With respect to Count Three, if you find that Connors  
4 did transport an explosive from Pennsylvania to Connecticut,  
5 but if you are not persuaded beyond a reasonable doubt that  
6 he knew or intended the explosive to be used to destroy a  
7 building, then you must acquit Connors on Count Three. But in  
8 that event, you could still find some or all of the other  
9 defendants guilty of Count Three, if you find beyond a reasonable  
10 doubt that they knowingly aided and abetted his transportation of  
11 explosives. Of course, before you could make such a finding,  
12 you would have to find that the defendant whose case you are  
13 considering knew or intended that the explosives would be used  
14 to destroy Plant 4 and that the defendant took some act to join  
15 the criminal venture of transporting the explosives and helped  
16 make that venture succeed. The point is that a lack of knowledge  
17 on Connors' part is not a defense that precludes a finding of  
18 guilt of any other defendant on Count Three.

19 The government contends that all of the defendants  
20 charged in Count Three, other than Connors, did take some action  
21 that makes them liable as an aider or abettor of Connors'  
22 transportation. They contend that Moeller authorized the  
23 payments, that Subar distributed payments to Peter Betres, that  
24 Peter Betres helped dispatch Connors on his way in the early  
25 morning hours of February 28, that Dennis and Michael Tiche helped



1 prepare the truck's cargo and load the truck, that Coffey rented  
2 the truck, and that Just made a trip to the plant on February  
3 17 with Dennis Tiche to look over the situation. I instruct you  
4 that before any one of these defendants can be found guilty of  
5 aiding and abetting the interstate transportation of explosives,  
6 as charged in Count Three, you must be persuaded beyond a  
7 reasonable doubt that he took action to become an aider or  
8 abettor, as I have defined those terms, sometime prior to the  
9 interstate transportation of the explosives. Specifically, even  
10 if you find that Just or Coffey or both of them were part of the  
11 trio that abducted the guards the night of March 1, that action  
12 cannot be considered as aiding or abetting the interstate  
13 transportation of explosives because by that time that transporta-  
14 tion had ended. Of course, if you find that either Just or  
15 Coffey or both were part of the trio that abducted the guards,  
16 you can consider that circumstance in deciding whether to infer  
17 that either or both had the requisite knowledge and intent  
18 concerning the intended use of the explosives at an earlier time  
19 when either or both are alleged to have taken some action to aid  
20 or abet the transportation.

21 So in considering the liability of each defendant,  
22 other than Connors, as to Count Three, first decide whether  
23 explosives were transported from Pennsylvania to Connecticut.  
24 If you find they were, then, as to each defendant, decide  
25 whether you are persuaded beyond a reasonable doubt that he

1 took some action before that transportation, but not after it,  
2 that aided or abetted that transportation. If he did, then  
3 decide whether you are persuaded beyond a reasonable doubt that  
4 at the time he took such action, but not after, he knew that he  
5 was aiding or abetting the transportation of explosives and knew  
6 or intended that those explosives would be used to destroy a  
7 building.

8 Count Four charges a violation of Title 26, United  
9 States Code, Section 5861(d). That section reads as follows:  
10 "It shall be unlawful for any person to receive or possess a  
11 firearm which is not registered to him in the National Firearms  
12 Registration and Transfer Record." Count Four charges all nine  
13 defendants with a violation of this statute. I won't read  
14 it since you have it in the jury room.

15 There are three elements of the crime charged in  
16 Count Four, each of which the government must prove beyond a  
17 reasonable doubt before there can be a conviction on that  
18 count. The first element is that a defendant on or about  
19 March 1, 1975, did possess a firearm within the meaning of the  
20 federal statute. The second element is that his possession was  
21 knowing: that is, that he knew that what he possessed as a  
22 firearm. The third element is that at the time of possession,  
23 the firearm was not registered to him in the National Firearms  
24 Registration and Transfer Record.

25 With respect to the first element -- possession of a



1 firearm -- the statute includes a definition of what constitutes  
2 a firearm. Included in that definition is the term "a  
3 destructive device," and "destructive device" is defined to mean  
4 "any explosive bomb." In this case, the government contends that  
5 the assembled device consisting of barrels of gasoline, sticks  
6 of dynamite under them, detonating cord running to the dynamite,  
7 and a timing device to activate the detonating cord is the  
8 destructive device or firearm that was possessed by the  
9 defendants. While dynamite alone does not constitute a  
10 destructive device within the meaning of this statute, if you  
11 find that there was in Plant 4 on the night of March 1 an assembled  
12 device of dynamite, detonating cord, gasoline and a timing  
13 device so constructed as to detonate the dynamite and ignite  
14 the gasoline, and cause an explosion and fire, you would be  
15 entitled to conclude that this device was a destructive device or  
16 firearm within the meaning of this statute. I should point out  
17 that this is the only device possession of which can be considered  
18 in connection with Count Four. There was some testimony about a  
19 pistol, but I instruct you that possession of that firearm, if  
20 it occurred, is not sufficient to prove the offense charged in  
21 Count Four.

22           The possession required for this first element need not  
23 be solely the possession of one person. Two or more persons may  
24 jointly share possession of an item, so long as each has direct  
25 physical control over the item.

1 As to the second element, knowing possession simply  
2 means that the defendant knows that what he possesses is a  
3 destructive device. It is not necessary that he know that  
4 the device comes within the statutory definition of federal  
5 law. Nor is there any requirement that a defendant know that  
6 the device must be registered. But there must be evidence that  
7 proves beyond a reasonable doubt that he knew what was possessed  
8 was a destructive device, in this case, a device capable of  
9 causing explosion and fire.

10 The third element is simply the fact that the device  
11 was not registered. You will recall there are in evidence  
12 certificates showing that a search was made of the National  
13 Firearms Registration and Transfer Record and that this search  
14 disclosed no record of a destructive device registered to any  
15 of the defendants. You are entitled, though not required,  
16 to conclude that these certificates establish the third element  
17 of this offense.

18 Again, as with the other substantive offenses, you will  
19 have to give consideration to the distinction between principals  
20 and aiders or abettors. The government's evidence, if you accept  
21 it, would tend to show that the destructive device was possessed  
22 in Plant 4 by Dennis and Michael Tiche, along with John Shaw.  
23 The government has also offered evidence to prove that each of  
24 the other defendants took some action to aid or abet their  
25 possession of the device. I have previously explained what sort



1 of action and state of mind is necessary to constitute someone  
2 as an aider or abetter. Let me point out that as to this count,  
3 unlike Count Three, the action of any defendant whom you find was  
4 in the plant and who participated in the abduction of the guards  
5 can be considered by you in deciding whether a defendant acted so  
6 as to aid and abet the commission of the offense charged in  
7 Count Four. Of course, no defendant can be convicted as an  
8 aider or abettor under Count Four unless you find beyond a  
9 reasonable doubt that he knew about the destructive device and  
10 intended by his action to participate with others in their  
11 possession of that device.

12 The jury may retire.

13 (Jury left courtroom at 2:45 p.m.)

14 MR. SAGARIN: Again, I have objected before, and so  
15 the record is clear, I am going to object to the extent the  
16 Court again just summarized the government's position and, in  
17 effect, gave some credence without giving any balancing effect,  
18 without what the defendants' side was, particularly at this late  
19 date. One of the problems which comes clear when you hear this  
20 charge, particularly out of the context of the other charge, is  
21 that the Court has told the jury to assume certain facts, for  
22 example, the Court instructing the jury on aiding and abetting  
23 said that -- I think, referred to a trio of kidnappers, and I am  
24 not sure that it's clear from the record that the jury has to  
25 find there were three kidnappers. Any of the three people who

1 abducted the guards. I think it's -- when the Court said that,  
2 it's taking away from the jury their obligation and right to  
3 find the facts. It's not altogether clear, the fact that  
4 somebody said there were three people doesn't make it a fact  
5 that the Court can charge the jury on. But that's a problem  
6 with the Court summarizing the evidence.

7 I think that kind of problem goes through each time  
8 the Court tells the jury what the government contends, because  
9 it doesn't put the other side of the scale and saying you don't  
10 have to believe any of that. It's been a week -- almost a week  
11 since defense counsel have argued, and the last two -- the last  
12 summation was the government's, and then the Court's charge  
13 on all of the government's contentions, almost putting it in  
14 an imbalance, if you believe this or if you believe this, as  
15 if you have to pick one story or another. When the Court does  
16 that, it's prejudicial to the defendants.

17 THE COURT: At several junctures, I said the govern-  
18 ment's evidence, if you accept it, if you believe it. I can't  
19 repeat that phrase each time I mention something. The language  
20 just will be incomprehensible. I just can't believe that from  
21 what I said to them in the full charge, and even now, they could  
22 possibly think I am telling them to find something as a specific  
23 fact. I just don't think that's, in any way, a reasonable  
24 interpretation of what they heard. I understand your point, but  
25 I have to disagree with it.



1 MR. CLIFFORD: On behalf of Michael Tiche, I join in  
2 the objection of Mr. Sagarin, your Honor.

3 MR. KOSKOFF: My objection is similar to that of  
4 Mr. Sagarin, your Honor. I would say that the government claim  
5 is that Moeller authorized the payment. I don't even think  
6 that's the government's claim. The government's claim is some-  
7 what different. That may be the thrust of what the government  
8 claims, but Mr. Dorsey never said that. Mr. Dorsey said that  
9 Moeller was a part of it, but I don't think he even said that  
10 the government's claim is that he authorized it.

11 At any rate, my objection is that -- I think if you  
12 said -- which is, of course, the defendant's dispute, as you  
13 said, although I agree you did say: if you believe the evidence,  
14 so I think it's substantially -- my objection is the same as  
15 Mr. Sagarin's.

16 MR. BOWMAN: I have to reiterate what Mr. Sagarin said,  
17 and I think that by the Court putting forth the government's  
18 contentions and not the defendants' contentions, just lays  
19 tremendous emphasis on the government's proof, and for that  
20 reason, I object.

21 MR. ZALOWITZ: Your Honor, I join with my other  
22 confreres and Mr. Sagarin. I think it's a recapitulation of what  
23 I said earlier, and as to the Court's analysis that it's  
24 incomprehensible, it may be incomprehensible in the Court's mind,  
25 but I doubt if it's incomprehensible in the minds of the jurors,

1 and I am asserting that by the failure to say that which Mr.  
2 Sagarin had suggested, the jury is becoming conditioned as to the  
3 Court's mind and is being put in the position of where they are  
4 being eliminated from their own mind in determining the facts  
5 here.

6 MR. CRAIG: On behalf of the defendant Just, I join  
7 Mr. Sagarin's objection. That was the point before your  
8 instruction and remains my claim now.

9 MR. CURTIS: I object, also, your Honor.

10 (Recess taken.)

11 THE COURT: They have indicated they wish to adjourn  
12 at four o'clock. I took their note to mean that adjourning at  
13 4:00 on Friday meant resuming on Monday, and I assume, but I better  
14 be sure, that no counsel wants to insist they come in on  
15 Saturday. Is that correct?

16 MR. SAGARIN: That's correct.

17 MR. CLIFFORD: That's correct.

18 MR. SAGARIN: One of the questions concerns this  
19 handbook for jurors. I have been advised by the Clerk that that  
20 is handed out to jurors, and from the question, it appears that  
21 maybe one of the jurors was advising another juror possibly what  
22 it said in the handbook. I wish they would be instructed not to  
23 consult this handbook, because their instructions here, which  
24 they were not given in this court, particularly some that deal  
25 with a type of Allen charge, don't hesitate to change your mind,



1 and I really ask for the Court to instruct them not to read  
2 anything, particularly this book, or refer to it in any way,  
3 if there are appropriate instructions, that the Court give it to  
4 them.

5 (Jury entered courtroom at 3:55 p.m.)

6 THE COURT: I understood there was a question relayed  
7 to the Clerk of the Court for a copy of the Handbook for Jurors,  
8 that some of you may have seen when you were first summoned for  
9 jury duty in this court.

10 Obviously, I don't know what may have prompted that  
11 request, and if there is some question in your mind about  
12 procedure or applicable law or something that needs to be  
13 clarified, in connection with this case, don't hesitate to --  
14 when we are next in session -- to indicate to me in writing  
15 what that inquiry is, so I can determine if it's something that  
16 needs to be clarified in connection with this case.

17 But I am going to reject the request to make copies  
18 of that handbook available at this point. It's a general sort  
19 of introduction to jury service, but at this stage, you have  
20 been impaneled as the jury in a particular case which is governed  
21 by particular rules of law, and I think any instruction as to the  
22 procedures or law that you receive should be limited to this case  
23 and should be only those instructions that I give you in connec-  
24 tion with this case, so that's why I am not going to give you this  
25 handbook, and if by any chance some of you have it or brought it

1 home, perhaps even months ago when you might have first been  
2 called for jury service, I am going to instruct you specifically  
3 not to refer to it and, in fact, not to refer to any other source.

4 Again, it comes back to what I said to you the last  
5 two evenings of considering yourselves as if you were sequestered.  
6 The only materials you're entitled to have are the exhibits that  
7 you have and instructions of law I have given you, and anything  
8 else that is made available to you in the courtroom, but nothing  
9 is to be referred to at home or anywhere else that doesn't come  
10 within the exhibits you get, the testimony you heard and the  
11 instructions of law that apply to this case.

12 Secondly, I should observe I think this point is  
13 clear, but I will repeat it so there is no ambiguity: in going  
14 over the matters I reviewed with you a couple of hours ago as to  
15 the two of the counts and aiding and abetting and things of that  
16 sort, as I did during the initial full charge, I refer to certain  
17 claims of the government, and I may have referred to certain  
18 evidence, and I just out of an abundance of caution want to again  
19 emphasize that those are only the contentions of the government.  
20 As you know, they are disputed, and that my reference to them is  
21 not in any way to be taken as in any way suggesting that any  
22 particular fact is so or that any particular contention is  
23 well founded or anything of the sort.

24 What I said to you in the initial charge fully applies,  
25 that all issues determining the facts, all issues concerning



1 determining the facts are for you, so I think that's clear.

2 I take it you are ready to go home. I have assumed  
3 that you expect your next business day is Monday. If you want to  
4 work sooner, I would consider that, but I take it you do not, that  
5 you prefer to have a normal weekend, and if that is your  
6 preference, we will honor it.

7 Bear in mind, since there will now be a two-day gap  
8 before you next assemble, that you must continue to be very  
9 scrupulous in considering yourselves as if sequestered, and not  
10 permitting any outside influences to intrude on your considera-  
11 tions; not discussing the case or any aspect of your deliberations  
12 with anybody, so that you return Monday morning at 10:00 a.m.  
13 without any outside suggestion or comment or anything of the sort.

14 All right. Jury is excused until 10:00 a.m. Monday.

15 Again, let me remind you, when you return, check in  
16 with the Clerk, assemble in the same room you have been using,  
17 but wait until all twelve are assembled before actually resuming  
18 deliberations.

19 All right, jury is excused until Monday at 10:00.

20 (Jury excused at 4:00 p.m.)

21 THE COURT: Now, I want to be sure that we make as rapid  
22 a determination as possible as to those portions of the Shaw  
23 testimony that are responsive to their latest request. A lot of  
24 transcript has been filed during the day, and some counsel have  
25 their own copies of some portions.

1           Let me first find out whether any counsel wishes to  
2 make use of the Court copy tomorrow in order to suggest portions  
3 that need to be read?

4           MR. SALOWITZ: I have most extenuating circumstances  
5 back home, but that doesn't say that I should not completely  
6 dedicatedly represent Reverend Bubar, but I am asking a question  
7 of the Court, if it will permit me, if the Court will permit me in  
8 this courtroom to excerpt out on a tape recorder those portions  
9 which I believe are applicable, even today?

10          THE COURT: You mean you want to read into a tape  
11 recorder the testimony?

12          MR. SALOWITZ: Portions that I -- maybe necessary to  
13 me, sir.

14          THE COURT: I don't mind if you do that. I just point  
15 out that once you do that, that's not going to tell me on Monday  
16 morning what parts you want. You can't just hand me a tape and  
17 say that if I listen to it, I will find out what you want.

18          MR. SALOWITZ: My position is, as I have noted  
19 previously, that I have not been able to -- for the reasons I  
20 have expressed, on the position of penuriousness, to have --

21          THE COURT: Let's be very direct, Mr. Salowitz. The  
22 only reason you didn't get the same transcript Mr. Craig got and  
23 several others is because you didn't ask for it. It has nothing  
24 to do with penuriousness. That's the fact.

25          MR. SALOWITZ: I differ with the Court on that fact.



1 THE COURT: You acknowledge you didn't make the request,  
2 is that right?

3 MR. SALOWITZ: That I did acknowledge, yes, sir, on my  
4 feet. The respected desire that I have is the Court will permit  
5 me to -- because if there are excerpts, I will have those  
6 portions typed available to argue from with pages --

7 THE COURT: I don't want argument on Monday. What I  
8 would like on Monday is for counsel to say to me, "Our request  
9 is page number such and such to page number such and such,  
10 lines such and such."

11 MR. SALOWITZ: That's what I intend to do, sir. I will  
12 comply with that.

13 THE COURT: I don't know how you're going to know the  
14 page numbers and the line numbers from your tape recorder.

15 MR. SALOWITZ: I will note it on my tape recorder  
16 as I read it.

17 THE COURT: If that's a system that helps you do something,  
18 you're certainly entitled to read it into a tape recorder. Do you  
19 propose to do that tomorrow?

20 MR. SALOWITZ: I know the hour is late. If need be, I  
21 shall be here very early in the morning and shall do it, because  
22 I don't want to hold the staff beyond their regular time, so I  
23 will have to stay over to accomplish it even tomorrow morning.  
24 That's my position.

25 THE COURT: Well, I am not going to have court personnel

1 stay here tonight for that purpose.

2 MR. ZALOWITZ: I respect that and recognize that.  
3 That's why I said I shall do it, if the Court permits me,  
4 tomorrow morning.

5 THE COURT: I can have Bruce -- does his key open  
6 up the jury room?

7 (Discussion off the record.)

8 THE COURT: As to Mr. Zalowitz's concern, I think  
9 we have straightened out at the bench. The U. S. Attorney will  
10 take the file copy of the transcript to his office, which will be  
11 open tomorrow morning. Mr. Zalowitz will be welcome to examine  
12 them and dictate into his tape recorder such references as he  
13 thinks will assist him in telling me what part of the transcript  
14 is responsive to the request of the jury he wants read.

15 MR. ZALOWITZ: Thank you very kindly, and thank Mr.  
16 Dorsey and his able staff. And Miss Consiglio.

17 MR. CRAIG: I have a question as to what your present  
18 intention is with respect to the Shaw testimony. Do you  
19 anticipate hearing arguments on whether or not it should be  
20 admitted to the jury room first on Monday; and secondly, do you  
21 anticipate, if it goes to the jury room, it will go in the  
22 form of a transcript or as read?

23 THE COURT: I understood there was strenuous objection  
24 to deverling to the jury transcript, whether full or partial  
25 or whatever, that whatever aspects of the Shaw testimony they



1 become aware of at this juncture, they should get by hearing  
2 it. Is that right?

3 MR. DORSEY: It would be an impossible task to do  
4 it, anyway, because there are segments that come in and out.

5 THE COURT: We are over that hurdle. Whatever they  
6 get, they will get by hearing it read.

7 MR. CRAIG: As to the question of whether they get  
8 anything, have you made up your mind on that at this point?

9 THE COURT: No, I have not, because I want to know  
10 how much of the transcript is responsive to their request. My  
11 guess is that the portions responsive to their request is a  
12 manageable portion, but if you all come back to me Monday and  
13 says, "Here's what we think is responsive," and it turns out  
14 it will take three full days to read it --

15 MR. DORSEY: Do you want us to provide your Clerk with  
16 what we think is includable within it and responsive to it so you  
17 might through their assistance formulate some sort of a position  
18 on the response which the others --

19 THE COURT: If anybody knows now what portions they  
20 think are responsive, I will be glad to get those page references.

21 MR. DORSEY: To have you sit on the bench, with all  
22 deference --

23 THE COURT: I meant you could hand me a list of the  
24 pertinent pages. It may be that counsel can -- defense counsel  
25 can somewhat correlate their efforts. I am not saying they have

1 to, but rather than getting nine separate lists, it may be  
2 that somehow you can divide up this chore, give something the  
3 initial responsibility and then just check with him Monday to be  
4 sure he picked up certain things of your own cross examination that  
5 you think are critical, but I leave that to counsel.

6 I would be willing to receive anybody's list of the  
7 pertinent pages, but I would like to get that first thing Monday  
8 morning. If any of those are available before we leave today,  
9 apparently the government's is, I would be glad to have it.

10 Are we clear on that?

11 MR. DORSEY: That means you ought to have in your file  
12 copy the transcripts so you can make use of the --

13 MR. ZALOWITZ: I didn't hear that.

14 THE COURT: He wants to be sure I end up with a copy  
15 so I can interpret whatever requests are made and somehow I will  
16 endeavor to get hold of a copy.

17 MR. ZALOWITZ: Otherwise, it will be deprivation --

18 THE COURT: Do counsel know what we need by Monday?  
19 Do we have any other problems that can be dealt with  
20 today?

21 (Court adjourned at 4:20 p.m.)  
22  
23  
24  
25



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----X

Criminal N-75-59

New Haven, Connecticut  
January 19, 1976

B e f o r e :

Hon. JON O. NEWMAN, U.S.D.J.

(In the absence of the jury.)

THE COURT: First of all, before I turn to the calendar, in the criminal case on trial, do counsel have their requests as to the pages of the Shaw testimony that are pertinent. Shelton case.

MR. CRAIG: It appears there is going to be no unified defense request. I made a list, and I was going over my list with Mr. Curtis this morning, and there is some disparity in -- differences --

THE COURT: Each counsel will have to submit whatever they want.

MR. DOW: Will there be a point at which we can be heard as to whether or not we think the requests are appropriate, or does your Honor just intend to rule?

THE COURT: I doubt if it needs argument.

MR. ZALOWITZ: Your Honor, naturally, I shall abide by the Court's determination, but I thought the Court might want to have argument with regard to the testimony of Shaw, and I am prepared to so argue.

THE COURT: I really don't think it's needed. I will be glad to have each counsel's list of pages they think are responsive to the jury's request. Do you have your list?

MR. ZALOWITZ: Yes, sir.

THE COURT: Please submit it.

MR. ZALOWITZ: Yes, sir. It is submitted, your Honor,



1 under protest.

2 THE COURT: It's what?

3 MR. ZALOWITZ: It's submitted as enumerated in my  
4 position here under protest, sir, but, nevertheless, it is here,  
5 without waiving any of the rights of that which I spoke about  
6 previously before your Honor.

7 THE COURT: Do other counsel have their request?

8 MR. BOWMAN: I think I speak for all counsel in our  
9 basic position on -- our basic position is we do not want any  
10 of the Shaw testimony read to the jury, nor do we want any  
11 transcripts submitted to them.

12 THE COURT: You are entitled to certainly let me know  
13 that view, but the question remains, if I am to read testimony  
14 responsive to their request, do you have a view as to which pages  
15 respond to that request?

16 MR. BOWMAN: Is your Honor saying that we -- that our  
17 request is overruled, in other words, our motion --

18 THE COURT: No, I thought I made this all clear on  
19 Friday. I said I wanted to see what pages counsel thought were  
20 necessary to respond to the request. When I saw how much that  
21 entailed, I would make a decision whether I thought it was useful  
22 to read to the jury that many or that few pages. So the first  
23 question is how many pages are responsive?

24 Now, the government has given me their, and I looked  
25 through to make my own tentative judgment. If other counsel don't

1 wish to submit a list, they don't have to. But if you want to,  
2 now is the time, as I indicated last Friday.

3 MR. BOWMAN: Without waiving our objection to having any  
4 of the testimony read of Shaw, it is our position that if any  
5 of the direct testimony is read to the jury, then all the  
6 cross examination must also be read.

7 THE COURT: Again, that really doesn't give me a list.  
8 That just tells me if something is done, something else should be  
9 done. I don't know why I can't have a response to the question  
10 I asked Friday, but if I don't, that's all right. I will just go  
11 on and make my own determination of what pages are responsive,  
12 but I thought counsel were insisting that we had a chance to submit  
13 their pages. If they don't want to, they don't have to, but if  
14 they want to, now is the time. Do you want to?

15 MR. BOWMAN: I think that the position of counsel is  
16 that if any of the direct testimony is read, then all the cross  
17 must be read, because it bears upon the credibility of John Shaw.

18 THE COURT: Then, I take it that what you think is  
19 responsive to the request is those portions of the direct which I  
20 pick out, plus all of the cross? Is that what it amounts to?  
21 It still doesn't give me much guidance on what part of the  
22 direct is needed.

23 MR. BOWMAN: There may be some position on direct, if I  
24 could confer with counsel for a moment, your Honor.

25 MR. CRAIG: Without waiving the position that's been



1 stated by Mr. Bowman, which I, on behalf of Mr. Just, adopt,  
2 being that we would request that all cross examination of Shaw  
3 be read, if any direct --

4 THE COURT: Your first position is that nothing should  
5 be read?

6 MR. CRAIG: That's correct.

7 THE COURT: Your second position is if any direct is  
8 read, all the cross should be read?

9 MR. CRAIG: Correct.

10 THE COURT: Now, the third position?

11 MR. CRAIG: The third position is if you are going to  
12 read direct, I have an area of the direct that I would propose  
13 you read. The testimony of 10/21, page 130, line 17 to page  
14 144 --

15 THE COURT: Do you have a list you're going to submit?

16 MR. CRAIG: Yes.

17 THE COURT: You don't have to read it.

18 MR. CURTIS: I have a slightly different list, and  
19 it's also my third position.

20 MR. CLIFFORD: The defendant Michael Tiche adopts the  
21 position of Mr. Bowman and Mr. Craig.

22 MR. NEIGHER: As does defendant Ronald Betres, and for  
23 our third position, we will adopt the list of Mr. Curtis, which  
24 will be submitted shortly.

25 (Recess taken.)

1 (In the absence of the jury.)

2 THE COURT: Gentlemen, I have reviewed the government's  
3 request and what I understand are the additional requests of  
4 the defendants. I understand your first preference -- your  
5 preferences are divided. Mr. Zalowitz wants the full testimony  
6 read, and the other counsel want no testimony read, and the jury,  
7 at least by their latest request, wants some testimony read.

8 I am going to endeavor to comply with their latest  
9 request, and I will have the court reporter read the following  
10 referenced pages in the order in which the examination was  
11 conducted. From the direct examination, page 127, line 18 to  
12 page 144, line 22; page 145, line 16 to page 146, line 13; page  
13 156, line 22 to page 158, line 25. From Mr. Bowman's cross  
14 examination on October 22, page 7, line 25 to page 14, line 2;  
15 page 16, line 16 to page 23, line 3. From Mr. Craig's examination  
16 on the 23rd of October, page 22, line 5 to page 24, line 6; then  
17 page 25, line 22 to page 25, line 25; page 26, line 22 to page  
18 28, line 5; page 31, line 5 to page 39, line 8. Then Sagarin's  
19 examination on the same date, page 76, line 19 to line 25. Then  
20 Mr. Neigher's examination on the 28th of October, page 2, line 6  
21 to page 19, line 24. Then Mr. Clifford's examination on the 28th,  
22 page 19, line 7 to line 23. From Mr. Curtis' examination on the  
23 28th, page 9, line 10 to page 10, line 5. Then from Mr. Golub's  
24 examination on the 29th, page 8, line 3 to page 10, line 4. Mr.  
25 Bowman's examination on the 29th, page 2, line 21 to page 4, line



1 16. Then Mr. Sagarin's examination on the 24th, page 2, line 4  
2 to page 4, line 11; page 6, line 21 to page 7, line 21. Finally,  
3 from Mr. Craig's examination on the 29th, page 9, line 4 to  
4 line 25.

5 I think that covers virtually all of what the defendants,  
6 with the exception of Zalowitz, requested. Mr. Zalowitz's  
7 examination that he referenced for me, I am satisfied does not  
8 in any respect refer to the jury's request, which is for the  
9 sequence of events on the night of the 1st and the ride to New  
10 York City in the early morning hours of the 2nd.

11 I have included some cross examination that bore  
12 specifically on those events, particularly identification cross  
13 examination.

14 That's the ruling and the reasons for it.

15 MR. ZALOWITZ: May I say one word? I will be very  
16 succinct. So, therefore, my position stands unfettersed that  
17 I made previously, and in my communication to the --

18 THE COURT: The record reflects your request, Mr.  
19 Zalowitz.

20 MR. ZALOWITZ: And denied totally?

21 THE COURT: I have granted requests to the extent I  
22 just indicated. To all other extents, they are denied.

23 MR. ZALOWITZ: Thank you, sir. Object to same.

24 MR. CURTIS: There is objection to the Golub's  
25 examination. Mr. Golub is no longer in the case, and it doesn't

1 seem to be anything that he might have asked about, referred only  
2 -- referred only to his client.

3 THE COURT: One of the present counsel requested it  
4 and several joined in. I am trying my best to accommodate you --

5 MR. CURTIS: I have objection to Golub material. I  
6 did not request. I don't know who did.

7 MR. CRAIG: Reading my list, it would appear as though  
8 a request were made by me. That was a note that area was  
9 relevant. I would withdraw that request and join Mr. Curtis that  
10 that not be read. I apologize.

11 THE COURT: None of the defendants want the referenced  
12 portion I just mentioned from Mr. Golub's cross examination?

13 MR. SAGARIN: That's correct.

14 THE COURT: That will be omitted.

15 (Jury entered courtroom at 12:30 p.m.)

16 THE COURT: Good morning, ladies and gentlemen. We  
17 have endeavored to identify those portions of the transcript of  
18 the testimony of John Shaw that are responsive to the last request  
19 you made concerning his testimony. That was his account of events  
20 with respect to the night of March 1st and the trip to New York  
21 in the early morning hours of March 2nd.

22 There are various sections of the direct examination  
23 and cross examination that to varying degrees touch on those  
24 events, and the court reporter will read those. He will read them  
25 in the order in which the examinations were conducted, so it will



1 be initially the direct examination by the government, and then  
2 in the order in which they occurred the different cross examina-  
3 tions of defense counsel that touch on those events.

4 Bear in mind what I am sure is obvious, that this is  
5 not his entire direct testimony nor his entire cross examination.  
6 So that whatever considerations are reflected in his testimony  
7 that either corroborate his testimony or impeach his testimony,  
8 in general, are not being read, but I think these parts are  
9 specifically responsive to your request.

10 It may be there are some other parts that you want to  
11 specifically have called to your attention, and if so, we will  
12 try to do that, but I think this is responsive to the last  
13 request you made.

14 All right.

15 (Portions of the testimony of John Shaw read to the  
16 jury.)

17 THE COURT: I think your lunches have probably arrived,  
18 and that's about half way through the portions to be read. We will  
19 suspend now and resume at two o'clock.

20 (Jury excused for lunch.)

21 MR. CRAIG: I didn't know you were going to consider  
22 testimony relating to identifications. Consequently, I didn't  
23 request a very short interchange between myself and Mr. Shaw  
24 about his capacity to identify a photograph of Anthony Just at  
25 that meeting in Pittsburgh on April 10. I would, therefore,

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1 request that small section be included in the reading.

2 THE COURT: I have instructed the court reporter  
3 to include the lines you marked, page 10, lines 9 through 22,  
4 from your examination of October 22.

5 (Recess taken for lunch.)  
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AFTERNOON SESSION

(Jury present.)

(Portions of the testimony of John Shaw read to the jury.)

THE COURT: Jury may retire.

(Jury left courtroom at 2:55 p.m.)

THE COURT: If counsel will return to me the lists they submitted this morning, which they retrieved --

MR. ZALOWITZ: I am not returning any list --

THE COURT: Your list. All three lists. Those submitted by Mr. Curtis, Mr. Craig and Mr. Zalowitz will be marked as the next numbered Court exhibit.

There was another note sent this morning. A juror wants to know could he be excused to make a phone call during the deliberation, and I took the liberty of assuring him he could, so I will mark it so there is no doubt as to what his message was.

MR. ZALOWITZ: May I ask my cross examination of John Shaw, dated October 23, 1975, be marked as a Court exhibit in conjunction with my presentment this morning --

THE COURT: The transcript, in the event of an appeal, will be part of the record, so I don't have to mark it separately. Your exhibit refers to the pages of the transcript.

MR. ZALOWITZ: The entire transcript, sir, practically, in essence.

THE COURT: Of your cross examination?

1 MR. ZALOWITZ: Yes, sir.

2 THE COURT: It will be part of the record, so it doesn't  
3 have to become part twice.

4 MR. ZALOWITZ: Thank you, your Honor.

5 THE COURT: Counsel in this case are excused.)

6 (Recess taken.)

7 THE COURT: Gentlemen, the jury advises they have  
8 additional verdicts, and they are coming in shortly.

9 (Jury entered courtroom at 5:10 p.m.)

10 THE COURT: Your note advises you have reached  
11 additional verdicts, Mr. Foreman. Would you hand them up,  
12 please?

13 THE COURT: Ladies and gentlemen, let me read these  
14 verdicts as you returned them, and please listen to be sure  
15 that I have correctly reported your verdicts.

16 In Criminal N-75-59, U.S. against defendant David N.  
17 Bubar, as to Count One, guilty; as to Count Two, guilty; as to  
18 Count Three, guilty; as to Count Four, guilty.

19 Are those your verdicts in that case, so say you all?

20 (Jury answered in the affirmative.)

21 THE COURT: In United States against Dennis C. Tiche,  
22 as to Count One, guilty; as to Count Two, guilty; as to Count  
23 Three, guilty; as to Count Four, guilty.

24 Are those your verdicts, so say you all?

25 (Jury answered in the affirmative.)



1 THE COURT: Are there requests of the jury in those  
2 two cases?

3 MR. CURTIS: Would you poll the jury, your Honor?

4 THE COURT: Yes, I will.

5 (Each juror, upon being asked by the Court, "Are those  
6 your verdicts?", answered in the affirmative.)

7 THE COURT: All right. Ladies and gentlemen, I see you  
8 have your coats on. I take it you're about to recess for the  
9 evening.

10 Again, let me caution you, as I have during these  
11 recesses in your deliberations, to be scrupulous, not to discuss  
12 the case or any aspect of it with anyone, nor permit anyone  
13 to discuss it with you.

14 You will be excused now until ten o'clock tomorrow  
15 morning. Again, remember to first check in with the Clerk's  
16 office and then report to the same jury room you have been using,  
17 but to wait until all twelve are assembled before resuming  
18 your deliberations.

19 The jury may be excused until tomorrow morning at  
20 ten o'clock.

21 (Jury excused at 5:15 p.m.)

22 MR. CURTIS: I would like to reserve the right to move  
23 for judgment of acquittal tomorrow. I would also like to ask  
24 that the bond be continued in the same amount pending appeal.

25 I have been informed that the state police are in

1 attendance waiting to arrest Mr. Tiche on state charges. He has  
2 never been arrested on the state charges, as of yet, and so I  
3 would ask that the bond simply be continued in the same amount  
4 pending appeal in this case.

5 MR. DORSEY: I can't agree with Tiche's bond. Your  
6 Honor may recall the circumstances. I would feel that the  
7 bonds in both instances, where considerably greater motivation now  
8 than existed previously, for which I have no other basis other  
9 than the change of circumstances of the entry of the verdicts,  
10 I feel the bonds should be increased significantly.

11 I would point out to the Court that at least in  
12 the case of -- the defendant Bubar, there is a passport situation  
13 that I think also ought to be rectified, the passport should be  
14 surrendered at this time.

15 (Continued on Page 11122, no omission.)  
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1 THE COURT: Do you want to be heard, Mr. Zalowitz?

2 MR. ZALOWITZ: Your Honor, first, I join with Mr.  
3 Curtis on the petition that he made.

4 With reference to the appeal, we definitely will  
5 file an appeal. I am not going to elucidate, because I think  
6 all my statements have been covered at great length before your  
7 Honor.

8 As to the continuance of the bail, sir, the Court  
9 is, I am sure, aware that at each and every time when we were  
10 commanded to be here, we were here. At no time was there any  
11 defalcation of our appearance. At all times we endeavored to  
12 be here promptly. At all times we paid our respected position  
13 to the Court.

14 Reverend Bubar, we contend, notwithstanding the  
15 verdict, is innocent, and we shall continue on our quest in  
16 God's name to prove same before the appellate division, the  
17 Court of Appeals of the Second Circuit, and even beyond to the  
18 Supreme Court of the United States in the event it becomes  
19 necessary.

20 With reference to the amount of the bond, sir,  
21 the Court is aware -- and I am certain -- that it was at great  
22 difficulty that we even raised the bond here in the Federal  
23 Court; and the bond, we urge and suggest to this Court, should  
24 continue because of a very significant position, the position of  
25 the fact that Reverend David Bubar is without funds and

1 penurious.

2           The Court is aware -- and I shall stand  
3 dedicatedly alongside of him all the way through -- the Court  
4 is aware of the position of counsel with regard to receiving  
5 any fees or compensation, but I shall stand there, this is my  
6 dedication. I shall stand, whichever way the Court decides  
7 as to that. If there be a determination in anywise.

8           Now, our system, I am certain, protects all  
9 people equally, protects the wealthy as against the poor. In  
10 this case, there is no question of the fact that Reverend Bubar  
11 is not a man of wealth or means. And I might add, his counsel  
12 is neither -- wealth or means, but we are standing in our  
13 position of faith in God that the ultimate decision will be made  
14 by the Power greater than I.

15           I am asking for the continuance, your Honor, of  
16 the bail as was set back in Memphis, Tennessee, and at that  
17 time, the bail was set in the amount of twenty thousand dollars.  
18 At that time, the U. S. Attorney, Mr. Dorsey, agreed to same.  
19 The marshal -- the magistrate there, Aaron J. Brown, Honorable  
20 Aaron J. Brown, thought it was proper; but not one moment did  
21 we ever give this Court -- I trust we haven't -- any concern as  
22 to the appearance of Reverend Bubar, for he is a man of God, and  
23 a man of God stands firmly against all accusations of morals.

24           I am saying and urging, sir, that with regard to  
25 the passport situation, of which the U. S. Attorney referred to,

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4  
1 should continue as it was originally -- without any confiscation  
2 thereof. There was never any design or thought of doing any-  
3 thing, and we have not. We have been here, sir, since March the  
4 3rd, 1974, and I personally have been in this court, sir, since  
5 March 12th, 1974, right to the present date. No matter what the  
6 circumstances of personal nature were, I still am here and  
7 have stood here, and shall continue to stay here, or in whatever  
8 tribunal this case must go onward and upward to vindication of  
9 Reverend Bubar.

10 I am asking that the passport not be surrendered,  
11 for this is a matter that belongs to the State Department and  
12 not to the Department of the Judiciary.

13 That utterance came, your Honor, all the way back  
14 when we were in Memphis, Tennessee in the U. S. District Court  
15 of the Western District of Tennessee when the same issue was  
16 urged by the Assistant U. S. Attorney, Mr. Parish, as to the  
17 passport, and judge -- the judge there, or the magistrate --  
18 for he is not formally in your capacity as a jurist, but he is  
19 a U. S. Magistrate -- said, "I know the background of Reverend  
20 Bubar. Reverend Bubar will not do anything in which will bring  
21 discredit not only upon himself, but upon the clergy, and  
22 upon his church and upon God."

23 We have stood here that way. I am asking, there-  
24 fore, in both instances, your Honor, in view of the fact that  
25 the Court has recognized, and the Court is aware, and the Court

1 has, no doubt, taken judicial notice of the fact that at no time  
2 were we, except in the dedication of our presentation, untoward  
3 to anyone, that we did meet our commitment of appearance here.  
4 We shall meet our commitment of appearance in whatever tribunal  
5 our American system of judiciary and democracy stands for. We  
6 shall stand that way.

7 To impose additional burden upon Reverend Bubar,  
8 who has been for at least twenty-nine to thirty days in the  
9 correctional center of Bridgeport, without the proper protection  
10 and medication and so forth, but, however, through the miracle  
11 of the Master, his bail was met in the amount as was designated by  
12 the jurist who was presiding in the state courts.

13 We maintain our innocence, and thank Heaven,  
14 while we are under the flag of the United States, our innocence  
15 reaches not only at this level, sir, but reaches until a final  
16 determination by the highest court of our land, the United  
17 States Supreme Court.

18 I am asking, sir, in view of these positions  
19 that I have brought to the Court's attention -- which if I  
20 hadn't brought it to the Court's attention, the Court in his  
21 own wisdom recognized it, I am certain -- you don't have a man  
22 here, Reverend Bubar, who has any background of any activity in  
23 any form, shape or manner. You don't have a man here who has  
24 a desire to harm anyone. You have a man here whose only position  
25 is a position of naivete as a minister of the gospel.



1 I recognize the difficulties that if one had a  
2 significant background of criminal activity, the Court and the  
3 U. S. Attorney could be unduly concerned with regard to the  
4 bail situation, but not so here. For if there was any such  
5 activity, I am certain that the United States Government, with  
6 its vast powers and its awesome powers of investigatory position,  
7 would have brought it forth before this jury, and yet through  
8 the many, many months, not one word of any unfavorable back-  
9 ground of Reverend Bubar has been introduced in this court,  
10 whether by a 302 report, or whether by anyone taking the stand,  
11 or whether by the interrogation of many people who were not  
12 even reported in the 302 reports, as to any activities of  
13 Reverend Bubar, except the activities in the name of God.

14 I, therefore, am asking for the Court's grace,  
15 for it is within your province, sir, to continue the bail as was  
16 in the amount of twenty thousand dollars, which is in existence  
17 right now, and that the bond be -- and that the passport be not  
18 upset in any form.

19 There are many factors here, and the Court is  
20 aware of it, that have been -- by reason of the Court's direction,  
21 and I respect that direction, and by the Court's determinations,  
22 and I respect that in a similar respected vein -- but when we  
23 look at the overall picture, notwithstanding the verdict of the  
24 twelve assembled honored members of the jury, we do have under  
25 our democracy the right of appeal. It's not a privilege, it's

1 not a grace, it's an absolute right, and I intend to invoke  
2 that right in accordance with the way that free men in America  
3 are given that right by reason of our laws, our statutes, our  
4 position of our conduct of equality of men in the field of law.

5 We find, and we do say, that we have been given  
6 respected courtesies by this Court, and likewise by the U. S.  
7 Attorney's office, but, sir, to precipitate a position where  
8 Reverend Bubar could verily become a martyr -- and I am not  
9 looking for him to become a martyr, nor a symbol of any  
10 impropriety by reason of the bail being placed in a position  
11 that he could not meet it -- for the Court is likewise aware of  
12 the fact that at all times and all conditions, Reverend Bubar  
13 and I have stood firm, stood straight, and stood upright, and  
14 yet, at all times have stood with dignity and respect to the  
15 Court.

16 I am asking for your kindness in the continuance  
17 of the bail as was, and for your permission to allow the passport  
18 to remain in status quo, and for the protection and insulation  
19 of that which this Court, under your administration, would and  
20 always has respected the right of appeal and the right to  
21 assert your individual freedoms and liberties, the right to  
22 move forward to the highest court in the land, for the Court here  
23 has been very scrupulous and circumspect in his position of  
24 the protection of these rights.

25 Therefore, with humility, I stand here, of course,



1 with a heavy heart, but not so heavy because the ultimate  
2 determination of this case will be under the banner of the  
3 Master in Heaven, and the One that controls the world and  
4 controls, and is the true Judge, and that is not with any  
5 impropriety, the statement I make to your Honor, because I do  
6 and always have professed my complete respect.

7 I am asking for the continuance of the bond, sir,  
8 so that we can go forward and protect our interests upward.

9 THE COURT: With respect to defendant Dennis Tiche,  
10 the state warrant may create something of a complication, and  
11 the determination I make this evening is without prejudice to  
12 a further application in the event other arrangements ought to  
13 be made to expedite whatever steps the State plans to take, but  
14 for the moment, I will alter the conditions of his bond pursuant  
15 to the General Statute 3146, but I think the fact of conviction  
16 significantly changes the circumstances, and at least for the  
17 moment, without prejudice to a motion for modification from  
18 Mr. Curtis, but for the moment, I will increase the amount of  
19 his bond to one hundred thousand dollars with corporate surety,  
20 failing which, he will be remanded to the custody of the marshal.

21 With respect to defendant David N. Bubar, I am  
22 going to deal with his case pursuant to Section 3148 of the  
23 Criminal Code. I am reluctant to detail very much of my reasons  
24 at this stage with the jury still considering other cases, but  
25 in the event this ruling is to be reviewed, I will at an

1 appropriate point detail the reasons, but I would rather either  
2 wait for the other jury verdict, or if there is a need for review  
3 before I submit a written statement of reasons only to counsel  
4 and for review by a review court.

5 I will simply refer to the statutory standard  
6 that provides that the conditions of 3146 are not to be used  
7 if the Court has reason to believe that one or more of those  
8 conditions will not reasonably assure that the defendant will  
9 not post a danger to the community, because I think that risk is  
10 present in his case, and under the provisions of 3148, I will  
11 not admit him to bond pending appeal.

12 He, of course, has full rights of appeal and  
13 may pursue those rights as expeditiously as he can, so this  
14 does not prejudice his right to appeal in any way, but the  
15 statute is very clear that under certain circumstances, a  
16 court ought not to admit a defendant to bail pending appeal.

17 I think this case falls within the statutory  
18 standard, and so the bond that has been in force up until now  
19 is revoked and he is remanded to the custody of the marshal  
20 forthwith.

21 MR. ZALOWITZ: We are without funds. I am asking  
22 for the furnishing of the transcripts to us at government  
23 expense so that we can forthwith proceed with our appeal to the  
24 Second Circuit Court of Appeals, sir, and whatever remedy I  
25 have with reference to the bail, I want to at least --



1 THE COURT: Are you referring to the trial transcript?

2 MR. ZALOWITZ: Yes, sir.

3 THE COURT: If you will submit the appropriate applica-  
4 tion, I will act on it.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----X

Criminal N-75-59

New Haven, Connecticut  
January 20, 1976

Before:

Hon. JON O. NEWMAN, U.S.D.J.

SANDERS, GALE & RUSSELL  
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AFTERNOON SESSION

(2:10 p.m.)

THE COURT: The jury has submitted two notes that have to do with scheduling. One refers to leaving today at 4:00 because one juror has some problems, and the second one sort of re-emphasizes that concern, and also calls attention to the weather conditions.

The more substantive note reads: "Request to hear Marie Fobes testimony when she was called for the first time."

Now, my notes indicate that's fairly brief testimony. I have asked the court reporter to find it, and I don't think it will take very long to read that to them.

Is there any objection to reading it?

(Jury entered courtroom at 2:10 p.m.)

THE COURT: Ladies and gentlemen, I have your notes, two of which concern scheduling. You request to recess today at 4:00, and the second note gives me a little more reason why you would like to do that, and we will recess at 4:00 today.

Your request concerning testimony reads: "Request to hear Marie Fobes testimony when she was called for the first time."

That testimony is fairly brief, and the court reporter has located it, and he will read you from his notes at this time.

(Testimony of Marie Fobes read to the jury.)

THE COURT: Jury may resume their deliberations.

1 (Jury left courtroom at 2:25 p.m.)

2 MR. ZALOWITZ: Your Honor, I am inquiring as to the  
3 answer to the removal of Reverend David Noble Bubar from the  
4 Whalley Avenue Correctional Center of New Haven, which I am  
5 asserting -- call it, if you will, is a prophecy -- today back to  
6 the Bridgeport Correctional Center, I am asking the question,  
7 is that the fact or no --

8 THE COURT: First of all, have you asked the marshal in  
9 whose charge this prisoner is?

10 MR. ZALOWITZ: I would like to ask him now.

11 THE COURT: Have you asked him?

12 MR. ZALOWITZ: I have not.

13 THE COURT: I wish -- you know he is in the custody of  
14 the marshal, so if you want to know where he is or where he is  
15 liable to be --

16 MR. ZALOWITZ: I know where he was last evening. I  
17 was there.

18 THE COURT: If you want to know is he going to be moved,  
19 the first person to ask is the marshal, as you surely ought to  
20 know.

21 MR. ZALOWITZ: You cannot anticipate of every day of  
22 every minute unless you are the person known as the marshal.

23 THE COURT: Mr. Zalowitz, you have received extraordinary  
24 cooperation from all the court personnel, far beyond what they  
25 need to do.



1 MR. ZALOWITZ: No one need to do anything, sir.

2 THE COURT: But they have. They have put themselves out  
3 for you in extraordinary ways.

4 MR. ZALOWITZ: In the interests of justice, not for  
5 me personally.

6 THE COURT: They have done things for you they would  
7 not do for any other person because they tried to be helpful.  
8 If you want to know is he going to be moved, the least you can  
9 do, before you take up court time in the middle of another  
10 trial is just ask the marshal, "Do you have any plans to move  
11 him?" He is right here. Go ask him.

12 MR. ZALOWITZ: Do you have any plans to move --

13 MR. DIRIENZO: I have been requested by the Connecticut  
14 Department of Corrections to move Reverend Bubar to Bridgeport  
15 Correctional Center. The request was made because they feel  
16 they are better able to cope with him at the Bridgeport institution  
17 for some reason, and the prophecy which Mr. Zalowitz claims was  
18 made I am sure is a result of the fact that Mr. Bubar's brother  
19 John works for the Connecticut Department of Corrections, and  
20 he was so informed by some member of that organization.

21 THE COURT: You wanted to know --

22 MR. ZALOWITZ: The reason that the Correctional  
23 Department of Connecticut has made Reverend Bubar the scapegoat  
24 in the movement, that's my question, sir.

25 THE COURT: Just a minute. Before you hurl words

1 around in this courtroom, no one has made a scapegoat out of  
2 anyone. He is in custody because of the verdict of a jury that  
3 found him guilty.

4 If you want to know why somebody in the Department of  
5 Correction has a preference as to where they house prisoners  
6 under contract with the Federal Bureau of Prisons, you ask them.  
7 You wanted to know is he going to be moved? You just got  
8 the answer, yes, he is going to be moved.

9 Do you have any other business before this Court at  
10 this time?

11 MR. ZALOWITZ: No, sir.

12 THE COURT: All right.

13 (Recess taken.)

14 (Jury entered courtroom at 4:05 p.m.)

15 THE COURT: All right, ladies and gentlemen, we will  
16 be in recess until tomorrow morning. Again, please faithfully  
17 bear in mind the instructions I have given you as you recess for  
18 overnight breaks during these deliberations. Don't discuss the  
19 case with anyone, nor permit anyone to discuss it with you,  
20 and when you resume tomorrow, wait until all twelve of you are  
21 reassembled before you resume your deliberations.

22 All right, the jury may retire, may be in recess until  
23 ten o'clock tomorrow morning. We expect you back here to resume  
24 your deliberations.

25 (Jury excused at 4:08 p.m.)



1 MR. ZALOWITZ: Your Honor, may I be heard, please?

2 THE COURT: If there is some motion or issue?

3 MR. ZALOWITZ: There is a great issue, sir.

4 I do recall, and I have the transcript of the Court's  
5 determination yesterday with reference to bail with reference  
6 to Reverend David Bubar. I am asking at this time in the  
7 furtherance of the protection of Reverend David Bubar, because the  
8 Court, to the best of my recollection, stated that the Court  
9 would divulge reasons for holding Reverend David Bubar without  
10 bail under the provisions of 3148 as distinguished from 3146.

11 It is most necessary and cogent to Reverend Bubar's  
12 position as of this moment for the Court to -- in his own  
13 fashion, as he did say that he would, by communication in, I  
14 believe, letter or otherwise -- disclose to counsel and counsel  
15 alone the reasons therefor.

16 Reverend Bubar is held without bail. I would like to  
17 have the Court, if you will, at your pleasure, whether it be  
18 tomorrow or whenever the Court feels in extremis and with urgency  
19 on the part of the Reverend Bubar for that communication letter  
20 so that I can perfect my appeal to the Second Court of Appeals as  
21 to the question of bail.

22 THE COURT: All right.

23 MR. ZALOWITZ: Would the Court kindly, at your pleasure,  
24 inform me the approximation of when I shall return for the Court's  
25 writing or determination in writing, sir, so that I can, with

1 propriety and dedication, continue my quest for the bail to be  
2 set and not to hold Reverend Bubar without bail, because he is,  
3 in accordance with our law, still protected until the final  
4 court of this great nation and democracy so determines. He is  
5 still innocent, because he has the right of that appeal, and  
6 that is the reason I am standing here at this time.

7 THE COURT: He is certainly not innocent at this  
8 moment. He has been convicted by a jury.

9 MR. ZALOWITZ: That's right, but he is innocent insofar  
10 as the final determination of the Supreme Court.

11 THE COURT: Absolutely not. He is guilty until some  
12 court reverses that conviction.

13 MR. ZALOWITZ: The Court and I have an honest -- the  
14 Court has made his determination and I made my position, but  
15 because of the urgency, I am asking for a thought as the Court  
16 wishes to inform me as to when that letter will be made available,  
17 and to me alone, so that I can fulfill my obligation to the Second  
18 Circuit Court of Appeals, and further at this time, I am also  
19 asking, sir, that the sealed document and instrument that has  
20 been sealed -- that it be opened --

21 THE COURT: A dozen documents are sealed. Give me  
22 a better description than that.

23 MR. ZALOWITZ: Yes, sir, the one specifically with  
24 reference to the two meetings that I have had with Reverend  
25 Bubar and Mr. Gale in your presence, sir, on the issue --



1 THE COURT: Your application for subpoenas?

2 MR. ZALOWITZ: Yes, sir.

3 THE COURT: What do you want done with that?

4 MR. ZALOWITZ: I would like to have that seal opened  
5 only specifically to the Court of Appeals.

6 THE COURT: That's already the condition under which it  
7 was sealed. No further order is needed. It was sealed for review  
8 by a reviewing court.

9 MR. ZALOWITZ: Then, that's my position so that is free  
10 for me to disclose to the upper court when I make my position  
11 for bail as well.

12 THE COURT: It has nothing to do with the bail issue.  
13 But you can make any arguments to the Court of Appeals that  
14 they wish to hear from you.

15 MR. ZALOWITZ: So, therefore, the seal is -- a sealed  
16 document or documents of two meetings here, and as well as in  
17 Hartford in your chambers, which I wish to bring forth to the  
18 Second Circuit Court of Appeals for their advice and instruction,  
19 and I am sure they will be made available by this Court for the  
20 purpose which I have stated at this moment.

21 THE COURT: I don't even know if they are transcribed  
22 at the moment.

23 MR. ZALOWITZ: They were transcribed, sir, I believe.  
24 Mr. Gale can so answer that. He is here.

25 THE COURT: Mr. Zalowitz, as I told you only earlier

1 this afternoon, if you want to know whether some other court  
2 official did something or knows something, you can ask them. You  
3 don't have to take up court time and make a record as you find  
4 out information from someone else.

5 MR. ZALOWITZ: I must make any record that I feel  
6 feasible in the protection of my client. I am not constrained  
7 to do that, sir.

8 THE COURT: Not any record that's an utter waste of  
9 the Court's time. If you want to know whether Mr. Gale has  
10 gotten a chance to transcribe that, you ask him, not on the  
11 record, not in open court, just ask him.

12 MR. ZALOWITZ: I wish it part of my record. He has  
13 never refused that -- he has been a very honored man and qualified  
14 man, but I still like to have the answer.

15 THE COURT: This hearing is concluded. And you ask  
16 him. He is going to be here working until five o'clock on  
17 another case. When he is finished that, you ask him.

18 MR. ZALOWITZ: Yes, sir. May I please ask the Court  
19 what day I may return for the letter which I have requested for  
20 your determination with reference to 3148 as distinguished from  
21 3146 on the question of bail?

22 THE COURT: When I have the reasons prepared, I will  
23 file them; and when they are filed, they will be available to you  
24 and to a reviewing court.

25 MR. ZALOWITZ: Thank you, sir.

(Court adjourned at 4:15 p.m.)

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NEW HAVEN, CONNECTICUT



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----X

Criminal M-75-59

New Haven, Connecticut  
January 21, 1976

Before:

Hon. JON O. NEWMAN, U.S.D.J.

SANDERS, GALE & RUSSELL  
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

141 CHURCH STREET  
NEW HAVEN, CONNECTICUT

1 (In the absence of the jury, 10:55 a.m.)

2 THE COURT: Gentlemen, first of all, as I have indicated,  
3 counsel are going to have to be within five-minutes notice of  
4 appearance when the court is in session, and failing that, some  
5 sanctions are going to have to be seriously considered, because  
6 we just each time --and it has happened several times -- we  
7 keep the jury waiting while all the lawyers and the clients are  
8 collected, so that situation is going to have to cease.

9 Secondly, as of today, one juror has reported that he  
10 is ill, although the expectation is that he will be available  
11 for service tomorrow.

12 My inclination is to simply let the jury go home and  
13 bring them back tomorrow morning. But I will hear any counsel  
14 who have any contrary views.

15 MR. ZALOWITZ: I do, sir.

16 THE COURT: You're not in the case at this point, Mr.  
17 Zalowitz. Your case --

18 MR. ZALOWITZ: I am still in the case --

19 THE COURT: He is not. I won't hear you on this point.  
20 The verdicts have been returned in your case, and the future  
21 deliberations of that jury are of no concern to you. I won't even  
22 hear you on this subject. Please be seated.

23 MR. ZALOWITZ: What you say, I shall comply. I made  
24 my position.

25 THE COURT: Right now.



1 Do any counsel whose clients are still -- hav their  
2 case being deliberated upon by this jury, have any contrary  
3 suggestion, other than to send the jury home for the day?

4 (No response.)

5 MR. BOWMAN: One matter before the jury comes in.  
6 There was a press release out of the U. S. Attorney's office  
7 in Pittsburgh regarding the 1971 Campizzi Gardens fire, and the  
8 press release announces that a previously sealed 17-count  
9 indictment that had been returned in October was unsealed, and  
10 that it named Dennis Tiche and John Shaw as defendants, as the  
11 perpetrators of that crime.

12 Now, the jury is going to be out for a day. It went  
13 out over the AP wire service, and the only thing I can say is that  
14 I would like to file this and also that the jury should be  
15 warned that they should not read the papers concerning this or  
16 any other matter.

17 I would like to file it and I would like it to be  
18 admitted as an exhibit in the previously filed motions for  
19 dismissal on the grounds of prejudicial publicity, since this  
20 has been generated by the government.

21 THE COURT: It can be marked as a Court exhibit. Is  
22 there any local newspaper report containing that?

23 MR. BOWMAN: There will be.

24 MR. CLIFFORD: It's a wire service.

25 THE COURT: All right.

1 MR. BOYMAN: I think the instructions should include  
2 the admonition not to listen to the news, radio, television,  
3 especially, since they are in the middle of deliberation, and in  
4 view of the government's press release regarding that Pittsburgh  
5 indictment.

6 MR. DORSEY: Your Honor -- there is a notation -- I  
7 don't know there is anything more than the normal unsealing of  
8 the indictment, of which your Honor has been aware. It's the  
9 one we talked about much earlier, and it has been sealed in  
10 accordance with my discussions with you and my request of the  
11 judge down there did not keep it sealed once there was a  
12 resolution of Dennis Tiche's case, and that's the reason why  
13 it has been unsealed at this time.

14 I don't know that there is a specific press release  
15 about it. I don't know there was anything more than the usual  
16 press becoming aware --

17 THE COURT: All right.

18 MR. ZALOWITZ: I must stand here --

19 THE COURT: What request are you making right now?

20 MR. ZALOWITZ: I am making a request, sir, that insofar  
21 as the Court had excluded every effort that I made to introduce  
22 that fire of -- the Campizzi fire, sir, the rights of Reverend  
23 Bubar by the exclusion of this Court was highly prejudicial and  
24 resulted in a failure of due process of law, sir.

25 THE COURT: Mr. Zalowitz, just a minute, before you



1 walk away --

2 MR. ZALOWITZ: I'm sorry. I apologize.

3 THE COURT: Just a minute. I asked you thirty seconds  
4 ago what request you were making. In view of what you said,  
5 the only truthful, honest answer to that question was, "I don't  
6 have a request at this moment, but I have some complaint I want  
7 to put on the record."

8 MR. ZALOWITZ: I didn't say the word "complaint", sir.

9 THE COURT: That would have been the honest, truthful  
10 answer. And then I would have not had the jury waiting while  
11 I heard your complaint. I could have heard your complaint five  
12 minutes from now, which would have been just as well.

13 In the future, sir, when I ask you if you have a  
14 specific request to make, you will tell me either that you do  
15 or that you don't.

16 MR. ZALOWITZ: Yes, sir.

17 THE COURT: And if you don't, you will wait until I am  
18 ready to hear you on your continuation of making the record.

19 MR. ZALOWITZ: Yes, sir.

20 THE COURT: If you don't abide by that, you personally  
21 will be subject to sanctions for misrepresentations to this  
22 Court. Do you understand that?

23 MR. ZALOWITZ: I heard what you said and I understand  
24 what you said.

25 THE COURT: So there will be no misunderstanding in the

1 future?

2 MR. ZALOWITZ: Yes, sir.

3 (Jury entered courtroom at 11:05 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. As  
5 you no doubt have become aware, one of your colleagues is not  
6 present today. He has called in to indicate he is not feeling  
7 well. There is a good expectation that he will be available to  
8 return for jury service tomorrow morning. So I will excuse you for  
9 the balance of the day and ask you to return at ten o'clock  
10 tomorrow morning. If I get any indication during the day of a  
11 different schedule, I will be in touch with you, but the present  
12 expectation is that we will be able to resume with all twelve  
13 jurors tomorrow morning, so I will excuse you for today.

14 Now, in doing that, let me continue to remind you of  
15 two things. First, the explicit instruction I have given you not  
16 to discuss the case with anybody, but to continue to consider  
17 yourselves as if you were physically sequestered so that you  
18 won't discuss it with neighbors, friends, anybody in any way;  
19 and secondly, let me remind you not to view any newspaper  
20 account of this case at all. It probably would really be the safest  
21 for -- so there is no misunderstanding arise, is you just really  
22 don't look at any paper while you're engaged in jury deliberations.  
23 Some great national or international event takes place, probably  
24 someone at home will bring that to your attention, but as far  
25 as the general run of news, probably it would be just as well



1 you don't even look at a newspaper while you're sequestered --  
2 in effect, sequestered -- if you were physically sequestered, you  
3 wouldn't see the newspapers, so it's just as well that you not  
4 look at newspapers or listen or watch radio or TV news accounts,  
5 so that no outside force of any sort intrudes on your consideration  
6 of this case or could even be misinterpreted by anybody else  
7 as intruding. It may be something that has no bearing on the  
8 case at all, but someone else might think: well, maybe, they  
9 thought about some article or account or something, so the safest  
10 thing is just to totally insulate yourselves from news accounts  
11 and, as I say, I am sure you're family will -- if there is  
12 some event in some far corner of the world that you ought to  
13 know about in another country or somewhere, they will tell you  
14 that.

15 All right. Please scrupulously heed these cautions.  
16 I make them to you out of my concern that the case be fairly  
17 decided, out of my concern that all parties in this case be  
18 treated fairly and out of concern that each one of you are fair  
19 to each other in maintaining the integrity of your jury delibera-  
20 tions.

21 The jury is excused until ten o'clock.

22 (Jury excused at 11:10 a.m.)

23 THE COURT: I will ask you to remain until the marshal  
24 tells us the jurors are out of the building.

25 (Case adjourned at 11:11 a.m.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----x  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----x

:  
:  
:  
: Criminal N-75-59  
:  
:

New Haven, Connecticut  
January 22, 1976

B e f o r e :

Hon. JON O. NEWMAN, U.S.D.J.



(In the absence of the jury, 10:40 a.m.)

1 THE COURT: Gentlemen, there is a note from the jury.  
2 It is fairly extensive, although, if you will bear with me as  
3 I read it, you will see it narrows down to quite a precise  
4 question at the end, but I will read it in full so you will have  
5 it in mind.

6 "We are at a juncture in the deliberation of a specific  
7 case where it is agreed that a further explanation of a portion  
8 of Count Two would be helpful. Because there are several specific  
9 charges listed under Count Two, please clarify if it is  
10 necessary for a defendant to be found guilty of all charges  
11 listed under Count Two, or a portion of the charges. We are  
12 referring to the section which reads, 'Did travel and cause travel  
13 in interstate commerce with the intent' -- and the "intent"  
14 is underlined -- "'to promote, manage, carry on and facilitate  
15 the promotion, management, and did'" -- and those two words are  
16 underlined -- "'perform acts to promote, manage, carry on and  
17 facilitate the promotion, management and carrying on of such  
18 unlawful activity.'

19 "If a defendant travels interstate not intending to  
20 commit a crime, then does commit a crime, is he liable to be  
21 found guilty of Count Two?"

22 MR. KOSKOFF: You can give a one-word charge on that.

23 THE COURT: Certainly, the answer to the precise question  
24 is no, and the only thing I am even considering saying in addition  
25 to is that when they refer to several charges in Count Two, what

1 they are really talking about is what I referred to is elements,  
2 and perhaps I just ought to explain to them that what they have  
3 identified as the traveling and the intent and the act thereafter  
4 are not different charges, they are different elements, and  
5 that each element has to be proved beyond a reasonable doubt and,  
6 therefore, the answer to their specific question is no.

7 MR. CLIFFORD: I think they should be told unless they  
8 find each element proven, then the verdict has got to be not  
9 guilty.

10 THE COURT: Well, all right. I think that's --

11 MR. CLIFFORD: I think that's the law.

12 THE COURT: It clearly is, and that's what I told them.  
13 I am just trying to be sure they don't think as to this or any  
14 other counts that there is more than one charge in one count.  
15 Obviously, it doesn't matter to them whether the word is "element"  
16 or "charge", but it just might be in the interests of clarity to  
17 avoid any misunderstanding on that. All right.

18 (Jury entered courtroom at 10:50 a.m.)

19 THE COURT: I have your note which reads as follows:

20 "We are at a juncture in the deliberation of a specific  
21 case where it is agreed that a further explanation of a portion  
22 of Count Two would be helpful. Because there are several specific  
23 charges listed under Count Two, please clarify if it is  
24 necessary for a defendant to be found guilty of all charges  
25 listed under Count Two, or a portion of the charges. We are



1 referring to the section which reads, 'Did travel and cause travel  
2 in interstate commerce with the intent' -- underlined -- "'to  
3 promote, manage, carry on and facilitate the promotion, management,  
4 and did'" -- those two words are underlined -- "'perform acts to  
5 promote, manage, carry on and facilitate the promotion, management  
6 and carrying on of such unlawful activity.'

7 "If a defendant travels interstate not intending to  
8 commit a crime, ~~then does~~ commit a crime, is he liable to be  
9 found guilty of Count Two?"

10 The simple answer is no.

11 Let me just say a few words so that we are clear about  
12 some of the terminology. Your question talks about several charges  
13 being included in Count Two. Actually, there is only one charge.  
14 Count Two itself is a single charge, but in order for there to  
15 be a conviction under that count, or under any count, for that  
16 matter, each of the elements that constitute that crime have to  
17 be established beyond a reasonable doubt.

18 Now, I think what you have referred to as charges are  
19 the same thing I refer to as elements, and as you indicated  
20 in your question, there are those three elements to Count Two:  
21 the interstate travel itself, having the requisite intent at the  
22 time of the travel, and thereafter performing an act to promote,  
23 manage, carry on, et cetera, or facilitate the promotion, et cetera,  
24 of an arson. Three elements: the travel, the intent at the time  
25 of the travel, and the act thereafter that promotes an arson.

1 Those are three elements of the crime charged in Count Two.  
2 Each element has to be proven beyond a reasonable doubt before  
3 there can be a conviction.

4 If any element is not proven beyond a reasonable doubt  
5 as to a particular defendant, there must be a verdict of not  
6 guilty as to that defendant.

7 So that -- so all of that leads to the answer I started  
8 with, because your specific question is: "If a defendant travels  
9 interstate not intending to commit a crime" -- I should pause there,  
10 because when you say "a crime", I assume your question is about  
11 the crime charged in Count Two, in other words, he must have the  
12 intent to promote, manage, carry on, et cetera, the commission  
13 of arson in violation of state law.

14 So your question, again, says: "If a defendant travels  
15 interstate not intending to commit a crime, then does commit the  
16 crime" -- by which I take it you mean then does commit an act,  
17 which is the third element of Count Two -- "is he liable to be  
18 found guilty of Count Two?" And, as I said, the answer is no,  
19 because, as you put the question, he did not have the requisite  
20 intent at the time of the travel and, therefore, must be acquitted  
21 of Count Two. Is that clear?

22 All right, jury may resume their deliberations.

23 (Jury left courtroom at 10:55 a.m.)

24 THE COURT: The note will become the next Court exhibit.  
25 Any exceptions to that instruction?



1 MR. CLIFFORD: No.

2 THE COURT: We will stand in recess.

3 (Recess taken.)

4 (In the absence of the jury, 4:30 p.m.)

5 THE COURT: There is a note from the jury that says,  
6 "We have reached a verdict on Charles Moeller."

7 (Jury entered courtroom at 4:35 p.m.)

8 THE COURT: Ladies and gentlemen, your note indicates  
9 you have reached an additional verdict.

10 Would the Foreman hand the form to the bailiff, please?

11 Ladies and gentlemen, let me read the verdicts to  
12 you in United States against Moeller, "We find as to Count One,  
13 not guilty; Count Two, not guilty; Count Three, not guilty;  
14 Count Four, not guilty."

15 Are those your verdicts?

16 (Jury answered in the affirmative.)

17 THE COURT: Any request of the jury?

18 MR. DORSEY: No, your Honor.

19 THE COURT: Ladies and gentlemen, I gather you just  
20 as soon recess at this point since it's virtually your quitting  
21 hour for the day, and resume tomorrow morning at ten o'clock.

22 Again, please scrupulously observe the cautions I have  
23 given you each evening about not discussing the case, nor reading  
24 about it or permitting anyone to discuss any aspects of it with  
25 you.

1           Return tomorrow at ten o'clock. Wait until all of your  
2 group are present, and then resume your deliberations at that  
3 time. Have a safe journey home. See you tomorrow morning  
4 at ten o'clock.

5           (Jury excused at 4:35 p.m.)

6           MR. KOSKOFF: May the bond be discharged?

7           THE COURT: The defendant Moeller's bond is discharged  
8 and he is released from all custody or connection with this  
9 case.

10          (Court adjourned.)  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----X

Criminal N-75-59

New Haven, Connecticut  
January 23, 1976

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

SANDERS, GALE & RUSSELL  
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

141 CHURCH STREET  
NEW HAVEN, CONNECTICUT

1 (In the absence of the jury, 2:30 p.m.)

2 THE COURT: Gentlemen, there is a note from the jury  
3 which reads as follows: "With regard to a specific case, request  
4 a review of aiding and abetting on Counts Three and Four."

5 I would propose to respond to that, as I did to a  
6 similar request, that I think at that time focused on Counts  
7 Two and Three --

8 MR. CRAIG: It was Three and Four.

9 MR. DORSEY: It was Three and Four.

10 THE COURT: Then, I was about to say I was going to  
11 respond similarly. I will propose to respond identically by  
12 telling them the elements of aiding and abetting, and what I  
13 told them about Counts Three and Four.

14 MR. CRAIG: Your Honor, I would object similarly to  
15 the relaying again of the evidence in the way that you did the  
16 prior time. Because I think it ought --

17 THE COURT: I understand that point, but as I indicated  
18 then, I don't think it's evidence, but I don't think I can  
19 explain to them the distinctions between principal and aider and  
20 abettor without, as I did in the initial charge, giving them some  
21 understanding of the crime.

22 I will emphasize, as I did at the conclusion, that, of  
23 course, this statement of a claim is only that, and that all those  
24 claims are disputed, but I just -- when they want clarification,  
25 I don't think I can just respond by abstracts.



1 MR. CRAIG: If I could propose an alternative way of  
2 looking at that request. It is a request for an instruction on  
3 the law, and I would have no opposition to an instruction on  
4 the law with respect to aiding and abetting in those two counts,  
5 but when you recite and list the government's contentions  
6 without identically reciting and listing the evidence that the  
7 defense uses to dispute the government's contentions --

8 THE COURT: You're comparing apples and oranges.  
9 The contentions aren't evidence, and every time I tell them a  
10 contention of the government, I am not going to tell them all  
11 the evidence the defendants say is opposed to that. I am not  
12 telling all the evidence the government says supports that  
13 contention.

14 I am trying to have them understand what it is the  
15 government has to prove beyond a reasonable doubt. Obviously,  
16 that involves talking a little more about the government's claim  
17 than your claim for the obvious reason that only the government  
18 has to prove anything and you don't. And that -- we had the  
19 discussion before. I understand you disagree, but I don't think  
20 we are going to illuminate that dispute very much more.

21 MR. BOWMAN: The only thing I would like to add to Mr.  
22 Craig's argument, with which I join, is that this is the third  
23 time that your Honor is instructing them on aiding and abetting.  
24 It's no longer a clarification, it's repetitive instruction on  
25 your Honor's summary of the evidence, and for that reason, I

1 object, and that it is not a clarification.

2 THE COURT: All right.

3 MR. SAGARIN: Your Honor, I would like to preserve the  
4 same arguments we made before, and would ask that the Court give  
5 -- at least give the same instruction it gave just before the  
6 jury was discharged the last time.

7 MR. CLIFFORD: For the record, on behalf of Michael Tiche,  
8 I join in the arguments of Mr. Craig, and Mr. Bowman.

9 MR. NEIGHER: I join in Mr. Craig's objection, too,  
10 your Honor.

11 (Jury entered courtroom at 2:35 p.m.)

12 THE COURT: Ladies and gentlemen, I have your note  
13 which reads: "With regard to a specific case, request a review  
14 of aiding and abetting on Counts Three and Four."

15 Now, since that inquiry doesn't identify any particular  
16 inquiry, and I am not suggesting it needs to, but I just want  
17 to indicate why I am doing what I am about to do.

18 I think the only way I can give the review you have asked  
19 for is to again go over the rules of law that concern aiding and  
20 abetting, and then turn to the elements of Counts Three and Four,  
21 which also contains some discussion of the relationship of  
22 aiding and abetting to Counts Three and Four, so I will do it that  
23 way.

24 Let me say at the outset, so there is no misunderstanding,  
25 in explaining these aspects of the rules of law, I will make some



1 reference to certain contentions of the government, certain  
2 claims that the government makes. Now, in alluding to those, I  
3 want you to clearly understand that any claim of the government  
4 in that regard is disputed by the defendants.

5 Now, I am not going to pause to summarize any of the  
6 evidence, either evidence that supports the claim or refutes it,  
7 but I want you to understand that in referring to a claim, I am  
8 not suggesting in any way that that claim is made out, nor do I  
9 want you to forget that that claim is, in fact, disputed, but I am  
10 simply trying to illustrate the way the claims are to be  
11 considered according to the standards of law, but whether those  
12 claims are made out or not is the question you have to decide,  
13 and my referring to them is not in any way to be taken to  
14 indicate that they are established at all.

15 Now, first, as to aiding and abetting, with respect to  
16 each of the substantive counts, there are two ways in which a  
17 defendant can be found guilty. One is as a principal: that is,  
18 he is found beyond a reasonable doubt to have committed the  
19 offense himself and to have had the requisite knowledge or  
20 intent. The second way a person may be found guilty of an  
21 offense is as an aider or abettor: that is, he is found beyond  
22 a reasonable doubt to have aided or abetted someone else to  
23 commit the offense and he has the same knowledge or intent  
24 required for conviction as a principal. If a person aids or abets  
25 another to commit a crime, then he may be found guilty of the

1 crime even if he did not personally do each act necessary to  
2 constitute the offense charged.

3 Section 2 of the Criminal Code proves: "Whoever  
4 commits an offense against the United States or aids, abets,  
5 counsels, commands, induces or procures its commission, is  
6 punishable as a principal."

7 Under this statute, every person who willfully  
8 participates in the commission of a crime may be found to be  
9 guilty of that offense. Participation is willful if done  
10 voluntarily and intentionally, and with the specific intent to  
11 do something the law forbids, that is to say, with bad purpose  
12 either to disobey or to disregard the law.

13 In order to aid and abet another to commit a crime it  
14 is necessary that the accused willfully associate himself in  
15 some way with the criminal venture, and willfully participate  
16 in it as he would in something he wishes to bring about: that  
17 is to say, that he willfully seek by some act of his to make  
18 the criminal venture succeed.

19 To be guilty as an aider or abettor, a person must be  
20 shown beyond a reasonable doubt to know the objective of the  
21 criminal venture and to intend by his actions to help make  
22 that venture succeed. He must also be shown beyond a reasonable  
23 doubt to have the same knowledge or intent required for  
24 conviction as a principal.

25 A person cannot be convicted of aiding and abetting



1 the commission of a crime unless the evidence establishes  
2 beyond a reasonable doubt that the crime occurred and that  
3 some other person performed the acts constituting the crime.

4 A person cannot be guilty of any crime, either as a  
5 principal or as an aider or abettor or as a coconspirator simply  
6 by being present during the commission of a crime, even if he  
7 has knowledge that a crime is being committed. There must be  
8 proof beyond a reasonable doubt that a defendant participated in  
9 the criminal offense, that he in some way took action to help make  
10 the venture succeed.

11 If you find with respect to any defendant on any count  
12 that he is guilty as an aider or abettor, your verdict is simply  
13 guilty on that count, without any special mention of the aiding  
14 and abetting statute.

15 Now, with respect to Count Three, the count charges  
16 a violation of Section 844(d), and that reads:

17 "Whoever transports . . . in interstate commerce  
18 any explosive with the knowledge or intent that  
19 it will be used . . . unlawfully to damage or  
20 destroy any building . . ." shall be punished.

21 And Count Three charges a violation against -- well,  
22 as of the time, I said against all eight defendants, the  
23 accurate way at the moment would be to say against all of the  
24 defendants whose cases you are now considering, except Ronald  
25 Betres. Ronald Betres is not charged in Count Three.

1           There are two elements of the crime charged in Count  
2 Three, each of which must be proved beyond a reasonable doubt  
3 before there can be a conviction on that count. First, that  
4 a defendant on or about February 28, 1975, did knowingly  
5 transport an explosive from Pennsylvania to Connecticut;  
6 second, that at the time of the transportation, he knew or  
7 intended that the explosive would be used unlawfully to  
8 damage or destroy a building.

9           With respect to the first element, the statute defines  
10 "explosive" to include all forms of high explosives, blasting  
11 materials, detonators and detonating agents, and you would be  
12 entitled to conclude that dynamite is an explosive within the  
13 meaning of the statute.

14          With respect to the second element, it is not required  
15 that the person who transports the explosive both know and  
16 intend that it would be used unlawfully to damage or destroy  
17 a building. It is sufficient if he either knew it would be  
18 so used or intended it would be so used.

19          An explosive is used "unlawfully" to destroy a  
20 building if it is used in the course of an arson in violation  
21 of state law.

22          As with Count Two, the requisite knowledge or intent  
23 for Count Three must be found to exist at the time of the  
24 transportation of the explosive, or prior to such transportation.

25          In considering Count Three, you will again be concerned



1 with the distinction I previously explained between those who  
2 may be found guilty as principals and those who may be found  
3 guilty as aiders and abettors. The government's evidence, if  
4 you accpet it, would tend to establish that the only defendant  
5 who actually transported an explosive from Pennsylvania to  
6 Connecticut was Connors.

7 As to all of the other defendnats, the government  
8 contends that they are guilty of Count Three in that they  
9 knowingly aided and abetted Connors in transporting the  
10 explosives. Bear in mind the standards I have previously  
11 explained as to what constitutes aiding or abetting. Without  
12 repeating them in detail, let me simply remind you that they  
13 require that a person know the objective of the criminal  
14 venture and by his action participate in it: that is, make it  
15 his own or in some way act to help bring about the commission  
16 of the offense.

17 And again I remind you that an aider or abettor under  
18 Count Three must be shown to have the same intent required for  
19 conviction as a principal.

20 You will also recall that I told you a person can be  
21 found guilty as an aider or abettor only if someone else, the  
22 principal, committed the acts constituting the offense. It is  
23 not necessary, however, that the principal be found guilty.  
24 With respect to Count Three, if you find that Connors did  
25 transport an explosive from Pennsylvania to Connecticut, but if

1 you are not persuaded beyond a reasonable doubt that he knew or  
2 intended the explosive to be used to destroy a building, then you  
3 must acquit Connors on Count Three. But in that event, you  
4 could still find some or all of the other defendants guilty of  
5 Count Three, if you find beyond a reasonable doubt that they  
6 knowingly aided and abetted his transportation of explosives.  
7 Of course, before you could make such a finding, you would have  
8 to find that the defendant whose case you are considering knew  
9 or intended that the explosives would be used to destroy Plant 4  
10 and that the defendant took some act to join the criminal venture  
11 of transporting the explosives and helped make that venture  
12 succeed. The point is that a lack of knowledge on Connors' part  
13 is not a defense that precludes a finding of guilt of any other  
14 defendant on Count Three.

15 The government contends that all of the defendants  
16 charged in Count Three, other than Connors, did take some action  
17 that makes them liable as an aider or abettor of Connors'  
18 transportation. They contend that Moeller authorized the  
19 payments, that Bubar distributed payments to Peter Betres,  
20 that Peter Betres helped dispatch Connors on his way in the  
21 early morning hours of February 28, that Dennis and Michael Tiche  
22 helped prepare the truck's cargo and load the truck, that Coffey  
23 rented the truck, and that Just made a trip to the plant on  
24 February 17 with Dennis Tiche to look over the situation. I  
25 instruct you that before any one of these defendants can be found



1 guilty of aiding and abetting the interstate transportation of  
2 explosives, as charged in Count Three, you must be persuaded  
3 beyond a reasonable doubt that he took action to become an  
4 aider or abettor, as I have defined those terms, sometime prior  
5 to the interstate transportation of the explosives. Specifically,  
6 even if you find that Just or Coffey or both of them were part  
7 of the trio that abducted the guards the night of March 1, that  
8 action cannot be considered as aiding or abetting the interstate  
9 transportation of explosives because by that time that transporta-  
10 tion had ended. Of course, if you find that either Just or  
11 Coffey or both were part of those that abducted the guards, you  
12 can consider that circumstance in deciding whether to infer that  
13 either or both had the requisite knowledge and intent concerning  
14 the intended use of the explosives at an earlier time when either  
15 or both are alleged to have taken some action to aid or abet  
16 the transportation.

17         So in considering the liability of each defendant,  
18 other than Connors, as to Count Three, first decide whether  
19 explosives were transported from Pennsylvania to Connecticut.  
20 If you find they were, then, as to each defendant, decide  
21 whether you are persuaded beyond a reasonable doubt that he  
22 took some action before that transportation, but not after it,  
23 that aided or abetted that transportation. If he did, then decide  
24 whether you are persuaded beyond a reasonable doubt that at the  
25 time he took such action, but not after, he knew that he was

1 aiding or abetting the transportation of explosives and knew or  
2 intended that those explosives would be used to destroy a  
3 building.

4 Count Four charges a violation of Title 26, United  
5 States Code, Section 5861(d). That section reads as follows:  
6 "It shall be unlawful for any person to receive or possess a  
7 firearm which is not registered to him in the National Firearms  
8 Registration and Transfer Record." Count Four charges all of  
9 the defendants whose cases you are now considering with a  
10 violation of this statute.

11 There are three elements of the crime charged in  
12 Count Four, each of which the government must prove beyond a  
13 reasonable doubt before there can be a conviction on that count.  
14 The first element is that a defendant on or about March 1, 1975,  
15 did possess a firearm within the meaning of the federal statute.  
16 The second element is that his possession was knowing: that is,  
17 that he knew that what he possessed was a firearm. The third  
18 element is that at the time of possession, the firearm was not  
19 registered to him in the National Firearms Registration and  
20 Transfer Record.

21 With respect to the first element -- possession of a  
22 firearm -- the statute includes a definition of what constitutes  
23 a firearm. Included in that definition is the term "a  
24 destructive device," and "destructive device" is defined to mean  
25 "any explosive bomb." In this case, the government contends that



1 the assembled device consisting of barrels of gasoline, sticks  
2 of dynamite under them, detonating cord running to the dynamite,  
3 and a timing device to activate the detonating cord is the  
4 destructive device or firearm that was possessed by the  
5 defendant. While dynamite alone does not constitute a  
6 destructive device within the meaning of this statute, if you find  
7 that there was in Plant 4 on the night of March 1 an assembled  
8 device of dynamite, detonating cord, gasoline and a timing device  
9 so constructed as to detonate the dynamite and ignite the  
10 gasoline, and cause an explosion and fire, you would be entitled  
11 to conclude that this device was a destructive device or firearm  
12 within the meaning of this statute. I should point out that this  
13 is the only device possession of which can be considered in  
14 connection with Count Four. There was some testimony about a  
15 pistol, but I instruct you that possession of that firearm, if  
16 it occurred, is not sufficient to prove the offense charged in  
17 Count Four.

18 The possession required for this first element need  
19 not be solely the possession of one person. Two or more persons  
20 may jointly share possession of an item, so long as each has  
21 direct physical control over the item.

22 As to the second element, knowing possession simply  
23 means that the defendant knows that what he possesses is a  
24 destructive device. It is not necessary that he know that the  
25 device comes within the statutory definition of federal law. Nor

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1 is there any requirement that a defendant know that the device  
2 must be registered. But there must be evidence that proves  
3 beyond a reasonable doubt that he knew what was possessed was a  
4 destructive device, in this case, a device capable of causing  
5 explosion and fire.

6 The third element is simply the fact that the device  
7 was not registered. You will recall there are in evidence  
8 certificates showing that a search was made of the National  
9 Firearms Registration and Transfer Record and that this search  
10 disclosed no record of a destructive device registered to any  
11 of the defendants. You are entitled, though not required, to  
12 conclude that these certificates establish the third element  
13 of this offense.

14 Again, as with the other substantive offenses, you  
15 will have to give consideration to the distinction between  
16 principals and aiders or abettors. The government's evidence,  
17 if you accept it, would tend to show that the destructive  
18 device was possessed in Plant 4 by Dennis and Michael Tiche,  
19 along with John Shaw. The government has also offered evidence  
20 to prove that each of the other defendants took some action to  
21 aid or abet their possession of the device. I have previously  
22 explained what sort of action and state of mind is necessary to  
23 constitute someone as an aider or abettor. Let me point out that  
24 as to this count, unlike Count Three, the action of any defendant  
25 whom you find was in the plant and who participated in the



1 abduction of the guards can be considered by you in deciding whether  
2 a defendant acted so as to aid and abet the commission of the  
3 offense charged in Count Four. Of course, no defendant can  
4 be convicted as an aider or abettor under Count Four unless you  
5 find beyond a reasonable doubt that he knew about the destructive  
6 device and intended by his action to participate with others in  
7 their possession of that device.

8 Unless your inquiry subsequently turns out to be more  
9 pointed than what you have made thus far, I think that's a  
10 sufficient review to be responsive to your request, and let me  
11 simply again emphasize that in referring to any claims of the  
12 government, you will understand those claims are all disputed,  
13 and that my reference to any aspect of the government's contentions  
14 is without bearing on any of the issues you have to decide.

15 All right, the jury may retire.

16 (Jury left courtroom at 2:55 p.m.)

17 MR. BOWMAN: We except to your Honor's reading of  
18 that testimony -- of your charge to the jury.

19 MR. SAGARIN: I joint in that.

20 MR. CLIFFORD: I object to that, also.

21 (Recess taken.)

22 (In the absence of the jury, 4:05 p.m.)

23 THE COURT: Gentlemen, the jury has indicated -- the  
24 specific note is from one of the jurors who apparently is not  
25 feeling very well at the moment and so they would like to go home

1 for the day.

2 MR. CRAIG: The defendant Just has no objection.

3 (Jury entered courtroom at 4:10 p.m.)

4 THE COURT: Ladies and gentlemen, there is a note  
5 indicating that one of the jurors is not feeling very well,  
6 and since it's near the end of the day, you are certainly  
7 entitled to go home, to return Monday morning ten o'clock.  
8 I hope that everybody will be feeling well on that occasion,  
9 so that the jury can resume its deliberations.

10 Again, please scrupulously abide by the cautions  
11 I have given you about not discussing the case with anyone at  
12 home at all, and also let me remind you, particularly during  
13 this time when you are in the process of deliberating, to be  
14 very careful not to look at any newspaper accounts at all, radio  
15 or television.

16 I think the safest approach, as I indicated before,  
17 is just to avoid newspapers, in general, for the time when you  
18 are deliberating. So, with your adherence to those instructions,  
19 we will see you Monday morning. Again, when you do reconvene,  
20 wait until all twelve are assembled before you resume deliberations,  
21 and jury is excused until ten o'clock Monday morning.

22 (Case adjourned.)  
23  
24  
25



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----x  
UNITED STATES OF AMERICA,

vs.

CHARLES D. MOELLER, et al.,

Defendants.  
-----x

Criminal N-75-59

New Haven, Connecticut  
January 26, 1976

Before:

Hon. JON O. NEWMAN, U.S.D.J.

SANDERS, GALE & RUSSELL  
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1 (In the absence of the jury.)

2 THE COURT: There is a note from the jury which reads  
3 as follows: the words "On Count Three" appear in parentheses  
4 at the top, and then the notes reads: "If he had the knowledge  
5 and intent of explosives prior to it being transported  
6 interstate, but did not assist physically in any way to transport  
7 the explosives, is he aiding and abetting?"

8 They seem to be placing emphasis on "physically".  
9 They underlined it in the note. And it may be that they are  
10 inferring that there is a certain type of activity that  
11 constitutes aiding and abetting, which is not necessarily so,  
12 in other words, if by physically doing something, they mean  
13 driving a truck, pumping gas into a truck, loading barrels onto a  
14 truck, while that would be aiding and abetting, that's not  
15 the sole definition of aiding and abetting. You can participate  
16 in a venture without ever touching the truck physically.

17 Since they have put it in terms of that word  
18 "physically", I have to respond to that in some way. I, of  
19 course, have to indicate there has to be some action by the  
20 person. It can't just be presence when others are doing  
21 something, but that it doesn't have to be action that touches  
22 the truck or loads a barrel or something like that, but it must  
23 be action by which the actor demonstrates that he is participating  
24 actively and knowingly in the venture that produces the  
25 transportation.



1 MR. CRAIG: I have a number of questions to ask your  
2 Honor. It seems to me that the contentions that you list when  
3 you read these instructions about all have to do with physical  
4 actions related to the transportation of the truck, not just the  
5 venture that produced the transportation. I would think that  
6 would be a major distinction between the transportation versus  
7 the venture that produced the transportation.

8 THE COURT: What do you suggest be said?

9 MR. CRAIG: No.

10 MR. BOWMAN: I have a further problem, and that is that  
11 it's my view that it's the question for the jury, whether or not  
12 specific action is -- falls within the definition of aiding  
13 and abetting, and what I am afraid of, if your Honor gives them  
14 an additional instruction that instructs them that if you find  
15 that particular -- that somebody has done particular action, and  
16 that's aiding and abetting, I feel that the Court is usurping  
17 their function. It's for them to decide whether or not filling  
18 the gas is aiding and abetting, because somebody theoretically  
19 could have put the gas in the truck, but not known what the  
20 cargo was, and not known that the truck was intended to transport  
21 the explosives.

22 THE COURT: I am certainly not going to let them suffer  
23 under that misapprehension, but their note itself indicates  
24 they are not suffering under that misapprehension, because they  
25 refer to a person who has knowledge and intent concerning the

1 explosives, so I don't think that's the problem we have.

2 MR. DORSEY: Would your Honor read the note in its  
3 entirety for me one more time, please?

4 THE COURT: It says: "If he had the knowledge and  
5 intent of explosives prior to it being transported interstate,  
6 but did not assist physically in any way to transport the  
7 explosives, is he aiding and abetting?"

8 MR. SAGARIN: I think at this point all the Court  
9 ought reasonable to do is just reread the jury the charge on the  
10 aiding and abetting, and only that portion without repeating  
11 the evidence, but simply tell them what aiding and abetting is.

12 I think it would be improper to answer that question,  
13 because you have to speculate on a number of possibilities that  
14 they can be considering, and I think any answer to that  
15 question necessarily would cut off some of those possibilities  
16 and may be misleading to the jury.

17 I am not sure that question should be answered any  
18 other way. They have been instructed three times what aiding and  
19 abetting was, and those instructions apply. I would object to it  
20 in --

21 MR. CLIFFORD: On behalf of my client, I join Mr.  
22 Sagarin in his observations.

23 MR. DORSEY: Your intention is to tell them if they  
24 find intent, that it is not necessary that physical participation  
25 or assistance is necessary in order to find culpability as an



1 aider and abettor?

2 THE COURT: Well, no, I don't think I can say that  
3 to them, because the person has to physically do something.  
4 He can't just remain inert and think evil thoughts. That would  
5 not be enough.

6 (Jury entered courtroom at 12:40 p.m.)

7 THE COURT: Good morning, ladies and gentlemen. I have  
8 your note which reads as follows: At the top it says in  
9 parentheses: "On Count Three", then it reads: "If he had the  
10 knowledge and intent of explosives prior to it being transported  
11 interstate, but did not assist physically" -- which you have  
12 underlined -- "in any way to transport the explosives, is he  
13 aiding and abetting?"

14 Let me respond in this way: I trust you have in mind  
15 what I said to you before about what constitutes aiding and  
16 abetting, the type of participation that can constitute someone  
17 as an aider and abettor, and the knowledge and intent that is  
18 required.

19 Now, you focused, by your question, on this word  
20 "physically", and as you put it, if the person did not assist  
21 physically in any way to transporting the explosives. If by  
22 physically assisting you have in mind doing something physically  
23 with the truck itself, that's not necessary. In other words, a  
24 person who drives it could be said to physically aid the trans-  
25 portation. Somebody who might fill up the gas tank, if he knew

1 what the venture was all about, might be said to physically  
2 aid the transportation. In that sense, physical action is not  
3 necessary in the sense of physically doing something to that  
4 truck. Other things could be considered and could be found by  
5 you to be aiding and abetting.

6 Let me, without in any way -- without asking you to  
7 disregard anything I said about aiding and abetting, let me  
8 just focus on one paragraph that I think gives perhaps the  
9 flavor of it that might be helpful.

10 In order to aid and abet another to commit a crime, it  
11 is necessary that the accused willfully associate himself in some  
12 way with the criminal venture and willfully participate in it as  
13 he would in something he wishes to bring about: that is to say,  
14 that he willfully seek by some act of his to make the criminal  
15 venture succeed. In other words, some physical action is  
16 necessary. A person cannot be a bystander, a spectator, even  
17 if he knows what's going on, that's not aiding and abetting. To  
18 be an aider and abettor, the person must be a participant.  
19 He certainly must do something by which he joins that venture,  
20 helps bring it about, indicates that he is doing something to help  
21 make that venture succeed. He doesn't have to physically touch  
22 the truck, but he must take some action which you find indicates  
23 to you beyond a reasonable doubt that he acted so as to participate  
24 to assist, to help bring about the transportation of the explosives.

25 If he took that kind of action, and the other elements



1 of the crime were established, and he had the requisite knowledge  
2 and intent, then he could be found guilty as an aider and abettor.

3 If he didn't take action that really shows he participated  
4 in helping to bring it about, that he -- or that he joined the  
5 venture himself, if he didn't take that kind of action, then  
6 he is not an aider and abettor.

7 Does that somewhat clarify the distinction?

8 I see some of you nodding yes, so I will leave it at that.

9 All right, the jury may be excused.

10 (Jury left courtroom at 12:45 p.m.)

11 MR. CRAIG: I will take an exception to the instruction  
12 for the reasons stated before the jury came in.

13 MR. SAGARIN: Your Honor, same exception for the reasons  
14 stated before. I join with Mr. Craig with his reasons as well.

15 MR. CLIFFORD: On behalf of Michael Tiche, I take excep-  
16 tion as stated previously by Mr. Sagarin and Mr. Craig.

17 MR. BOWMAN: I join also with Mr. Sagarin and Mr. Craig  
18 on behalf of Mr. Coffey.

19 THE COURT: Do the four counsel to whom Count Three  
20 applies -- I understand you have excepted -- is there anything  
21 you think should be said that, in your view, more accurately or  
22 more correctly states the law than I have endeavored to say it?

23 MR. CRAIG: I think the proper answer would be no.  
24 think there must be some action physically to assist in the  
25 transportation, and that's just the request that I made prior to

1 instruction.

2 THE COURT: All right, if that's the request, I don't  
3 think I will charge further, but I don't think I said anything  
4 different than that. I don't think I in any way let them find  
5 someone guilty as an aider in the matter in the absence of some  
6 action by that person. But it just seemed to me their use of the  
7 word "physically" may well be an unnecessarily narrow one. I think  
8 that's why they asked the question, or that may be well why they  
9 asked the question, and since I am satisfied that what I said  
10 doesn't differ from your view of what's required, I don't think  
11 there is any need to instruct further. All right.

12 (Recess.)

13 (In the absence of the jury, 4:00 p.m.)

14 THE COURT: There is another note which you have had a  
15 chance to see at the bench. It can't be literally complied with,  
16 even if that were advisable, because while the portions of the  
17 original charge are written out and available for the jury to see,  
18 responses to questions have not been transcribed.

19 My inclination at the moment is not to try to respond  
20 to this by trying to select portions of transcript or portions of  
21 the charge, but rather to deal with the very first observation  
22 they make, that there are many different interpretations and to  
23 point out to them that if on any aspect of the law there is a  
24 different interpretation, then they ought to submit a very precise  
25 inquiry so that difference can be resolved by me, because the issues



1 of law are not to be left to their different interpretations.

2 I can tell them that portions of the original charge are  
3 available, although I would rather not make any decision about  
4 sending them portions until I know exactly what their problem  
5 is, and I just don't know from this note.

6 MR. SAGARIN: Our concern with the Court's proposed  
7 response is, in effect, it invites special interrogatories and  
8 special verdicts, which the Court didn't see fit to either charge  
9 the jury on -- and at this late date, we think it would confuse  
10 the issue and narrow the issues of fact which are involved.

11 We would oppose, I think, on behalf of all the  
12 defendants, the Court further charging the jury in the absence of  
13 some specific -- in some request that calls for a further charge.  
14 The Court told them about aiding and abetting three times --  
15 four times, as I count now -- and each time it seems to be -- as  
16 we get farther and farther away from the legal arguments, some  
17 of which were two and a half weeks ago -- I think can only cause  
18 more focus on the government's case and not on the defendant's  
19 case, so we would oppose the Court telling the jury anything with  
20 respect to this request.

21 I think all the Court can simply say, if there are  
22 portions of the charge that you want reread, the Court will  
23 consider those requests, but to invite what amounts to special  
24 requests or requests for special findings --

25 THE COURT: No. I don't plan to say anything to them to

1 in any way request a special finding on interrogatories or  
2 anything of the sort.

3 MR. SAGARIN: It also seems that the Court's proposed  
4 response might have -- effect the jury -- an individual juror's  
5 determination that he is free to find the facts as he feels them  
6 to have been proved, and I know the Court was talking about the  
7 law, but there is sort of gray areas in here, particularly in  
8 light of the last questions which dealt with what a person  
9 physically did, and I think that the Court -- the proposed  
10 response to the jury might inhibit a juror from making --  
11 from knowing that he is free to make independent determinations  
12 of fact.

13 THE COURT: I think I can assure that rule is kept clear.

14 MR. CRAIG: My one concern is that the specific  
15 requests that probably will be coming back as a result of the  
16 response that I think you intend to give to that question may  
17 mix up the fact and the law, the issues of facts and issues of law,  
18 and the way I see that happening would be something like this:  
19 for the jury would come back and say, "Does it satisfy aiding  
20 and abetting on Count Three if we find that one defendant rented  
21 the truck?" You're going to end up with some kind of combination  
22 factual question and legal question, which can't help but get  
23 into a comment by your Honor on the evidence as well as on the  
24 government's contentions, which is something that we have been  
25 opposed to all the way through.



1 THE COURT: I can't predict what question they are going  
2 to ask next. If that's the question they ask next, they may  
3 be entitled to an answer.

4 MR. CRAIG: My problem with the proposed answer that  
5 you have got, it's an invitation to a series of questions that  
6 relate to specific factual disputes as to whether the facts  
7 alleged by the government satisfy the law.

8 THE COURT: I have to endeavor to make the law clear  
9 to them, and if the only way it will become clear to them is for  
10 them to ask a series of questions, then I will have to entertain  
11 them. Whether I answer them and how I answer them, we will take  
12 up when those questions arise. But right now, they are telling  
13 me there are different interpretations, and I have got to be clear  
14 with them that while they are free to interpret the facts any way  
15 they want, they are not free to interpret the law any way they  
16 want.

17 MR. CLIFFORD: I join Mr. Sagarin and Mr. Craig, with  
18 one additional objection, your Honor, and it's probably a losing  
19 battle on the grounds of jury nullification, I would except to  
20 any charge to the fact that the law is to be as given to them by  
21 you as the Court. I have argued that and I have lost.

22 THE COURT: I already told them that in the initial charge,  
23 and I am not going to depart from it now.

24 (Jury entered courtroom at 4:10 p.m.)

25 THE COURT: Ladies and gentlemen, I have your note which

1 reads as follows: "Due to too many different interpretations by  
2 the jurors, we feel it necessary to ask for and receive copies  
3 of our questions to the Judge and his answers to our questions.  
4 We feel this will facilitate our deliberation, specifically  
5 Counts Three and Four. Would it be possible for Judge Newman  
6 to respond to this either by letter or the marshal, rather than  
7 have us go into court for an answer?"

8         The answer to the last question is no, and the reason  
9 that I prefer to have you in court is so that I can discuss a  
10 little with you this overall note that you have sent. As to  
11 my responses to your questions during the course of your  
12 deliberation, while they are being taken down by the court reporter,  
13 there is no typed transcript available. If it became necessary  
14 to have a particular matter transcribed, I guess that could be  
15 done, but right at the moment, that matter just doesn't exist in  
16 typewritten form.

17         The initial charge is written out, and it might become  
18 appropriate for portions of that to be sent to you, although I  
19 am not so sure that's a useful idea at this point.

20         You refer to Counts Three and Four, and you have  
21 previously inquired about Counts Three and Four, and I have read  
22 to you the elements of Counts Three and Four. What troubles me  
23 about this note is when you refer to, as you put it, too many  
24 different interpretations -- now, let me be very clear with you  
25 about one thing. If you have different interpretations about



1 the facts, that's an area within your province, the fact finding,  
2 as I think I made clear to you at the outset, and I don't want to  
3 intrude on that at all.

4 If you have different interpretations about the law  
5 or about what I said about the law, then I do want to be very sure  
6 I clarify what the law is so that as you apply the law to the  
7 facts that you find, you do so accurately.

8 So in order to frame any kind of a helpful response to  
9 you beyond what I have given, and it may be that the reading of  
10 the elements of the counts as I have done to you, with whatever  
11 other material I have already conveyed to you, that may be as  
12 much discussion of the law as I can usefully give you, but having  
13 heard that, if there is a difference of opinion between you as  
14 to what the law is, or as to what I meant by a particular phrase  
15 or word or discussion of the law, if that's what the interpreta-  
16 tions are about, then the only thing I can suggest is if you  
17 want to make your inquiry to me a more precise one, it may be  
18 I can further interpret the law.

19 Now, it may be that there is a point beyond which  
20 interpretation of the law just can't go and still be meaningful  
21 or helpful, and I can't tell what you mean by different  
22 interpretations. So I think I have to leave the matter with you.  
23 If you are considering the fact finding, then there is no  
24 interpretation I can supply on that, because you are the sole  
25 judges of the facts. But if there is a difference among you as to

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1 how the law should be interpreted, then you may want to consider  
2 -- you certainly don't have to -- but you may want to consider  
3 whether you want to ask me a more precise question about the law,  
4 and it may be that with such a question, I will be able to  
5 provide you with a further clarification of what the law is. But  
6 I think to try to generally respond would be inappropriate because  
7 I may be covering matters that are just no special concern to  
8 you at all at the moment.

9 I can appreciate that sometimes listening to legal  
10 explanation is not as easy as having a chance to read them,  
11 but as I have indicated, some of what I said to you is now typed  
12 and some is not. So I think the best way to leave it for the  
13 moment is for you to decide as a group what your preference  
14 would be.

15 In general, I am not so sure sending particular  
16 sentences or paragraphs of a charge to a jury is necessarily  
17 useful. I am afraid that sometimes you then read those without  
18 considering the totality of the charge. So that if you have a  
19 question, I think it's better if I know exactly what the question  
20 is and then can decide what type of response would be most  
21 appropriate to you, but let me emphasize, if it's a question of  
22 interpreting the law, and if you think a question will clarify  
23 or will elicit some clarification from me as to what the law is,  
24 you should not hesitate to frame a very pointed question about the  
25 law.



1 If the differences in interpretation relate to the  
2 facts, those are matters entirely for you to decide. So I  
3 will excuse you now and just let me know whether you wish to  
4 frame a further inquiry or not. I will leave it at that.

5 (Jury left courtroom at 4:20 p.m.)

6 THE COURT: I think counsel ought to be available.

7 MR. CRAIG: Would you like us to formally take excep-  
8 tions again, or can we rest on our earlier comments?

9 THE COURT: Well, you can do what you want. I wasn't  
10 clearly, frankly, initially how you thought I should respond,  
11 and by excepting, I am not exactly sure what you're complaining  
12 about, but if you think there is a complaint to be made, you  
13 should make it in whatever fashion you wish.

14 MR. CRAIG: I would like for the record to reiterate my  
15 objection at the invitation set forth by the Court to the jury  
16 to frame more precise questions with respect to areas that they  
17 have already been instructed on, at least four times. I think  
18 that's an invitation for comment on facts as applied to the law  
19 and the facts, and that's beyond the province of the Court, and  
20 I think it's just an invitation for trouble, actually. That's  
21 my comment, your Honor.

22 MR. BOWMAN: Your Honor, I wish to except to what you  
23 stated in the complaint -- and the complaint that I have is  
24 while you told the jury it's within their province to consider the  
25 facts and the Court's province to consider the law, there may be

1 a question as to who is to apply the law to the facts. I am not  
2 sure it was that clear to the jury and, in any event, I take  
3 exception to that portion.

4 MR. SAGARIN: Your Honor, I join in the other comments.  
5 I don't think that note called for any real comment by the Court.  
6 I think the Court hit on it. The Court made it as clear as it  
7 can four different times what the law is with respect to Counts  
8 Three and Four, and to suggest: gee, you didn't do it as well  
9 the first time, you may do better the fifth time, I think invites  
10 confusion and invites the jury focusing on specific facts which  
11 I think the Court didn't want to do. For example, I had made a  
12 request that the Court charge the jury with respect to two  
13 specific facts, that if they made certain findings on those,  
14 then they had to reach a certain result, and the Court chose not  
15 to do that initially.

16 THE COURT: That was a rather different situation. You  
17 wanted me to tell them that only if they found one of two facts  
18 could they convict on a certain count.

19 MR. SAGARIN: That's correct. And if they had found  
20 that the absence of one of those two facts, there would be a  
21 basis for acquittal, and I think the Court has invited that type  
22 of inquiry from the jury, and I think there is no need to. The  
23 Court already instructed the jury on the law. It's not going to  
24 make it any clearer by saying, "I am going to change what that  
25 instruction is."



1 THE COURT: Now, wait a minute. I didn't suggest I was  
2 going to change the instruction. I may refine it. I have given  
3 them what, after all, are rather abstract propositions of law,  
4 and it may be that is where they are having differences of  
5 interpretation, and if they are, and I don't know whether they  
6 are not entitled to a refinement of abstract propositions.

7 MR. SAGARIN: It's the same reason. We don't issue  
8 special interrogatories in criminal cases.

9 THE COURT: That would be if I was asking them for an  
10 answer to a specific question. The issue is whether they are  
11 going to ask me for the answer to a specific question. I don't  
12 know of any rule that prevents a judge from being as helpful as  
13 he can to a jury knowing what the law is.

14 MR. SAGARIN: I think when the Court does that, then  
15 it unnecessarily, and I think improperly, prevents the jury from  
16 what it has to do, which is to determine its facts from the  
17 entire range of evidence in the case. It would be as if in a bank  
18 robbery case, the Court's instruction to the jury is: if you  
19 find he is in the bank, then you should find him guilty. I think  
20 that's an improper -- we don't have special interrogatories in  
21 the criminal cases, and I think that's what the Court is inviting.  
22 It might be -- it might be nice to say to the jury, "I would  
23 like you to find A, B and C" --

24 THE COURT: I don't understand how the whole discussion  
25 of special interrogatories enters into it. A special interrogatory

1 is when you ask the jury to answer a specific question. I didn't  
2 ask them to do that. I didn't tell them to do it. I didn't  
3 suggest they should do it. I said if they want to ask me a  
4 question, they can do it. That's not a special interrogatory.

5 MR. SAGARIN: What the Court is now doing is that,  
6 in effect, the Court is saying, "Find some special questions you  
7 can ask me," and it doesn't matter whether they emanate from the  
8 jury or from the Court. The Court is causing them to focus on  
9 only specific parts of the case, and I think that's improper  
10 and not called for in view of the Court's instructions.

11 THE COURT: Well, I guess I understand your point.  
12 I really don't see how that is the situation that's happening,  
13 but if you view it that way, you're certainly entitled to.

14 MR. CLIFFORD: On behalf of the defendant Michael  
15 Tiche, I join my cocounsel in their exceptions to the further  
16 charge. I also -- the added ground that the jury has a right  
17 to nullify the law, and I would except to any charge by you to  
18 the jury to the contrary.

19 MR. NEIGHER: I join Mr. Clifford, your Honor.

20 (Recess taken.)

21 (In the absence of the jury.)

22 THE COURT: They have sent me a note which reads as  
23 follows: "Count Three, if a defendant only" -- and that word is  
24 underlined -- "had the knowledge and intent of the transported  
25 explosives prior to it being transported, is he aiding and abetting?"



1 I assume you want me to answer that no?

2 MR. CRAIG: That's correct.

3 (Jury entered courtroom at 4:55 p.m.)

4 THE COURT: Ladies and gentlemen, I have your note which  
5 reads, "Count Three, if a defendant only" -- underlined -- "had  
6 the knowledge and intent of the transported explosives prior to  
7 it being transported, is he aiding and abetting?"

8 The answer is no.

9 (Jury left courtroom at 4:56 p.m.)

10 (Recess taken.)

11 (Jury entered courtroom.)

12 THE COURT: All right, ladies and gentlemen, your note  
13 indicates you would like to go home, and you may.

14 Again, please bear in mind and pay very careful  
15 attention to the instructions I have given you about not discus-  
16 sing the case with anyone during these overnight recesses, nor  
17 reading anything about this case. I think still the best thing  
18 is just not to look at newspapers during the time you're  
19 deliberating as a jury, and that includes any radio or television  
20 accounts that -- if there should be any, but please don't discuss  
21 the case. Just bear in mind the integrity of yourselves as a  
22 jury of twelve persons. When you come back tomorrow, wait until  
23 all twelve are assembled before you actually begin your delibera-  
24 tions. Jury is excused until ten o'clock tomorrow morning.

25 (Jury excused. Court adjourned at 5:10 p.m.)

